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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12 CR 45 (RJS)

5 JERMAINE DORE and DWAYNE
6 BARRETT,

7 Defendants.

-----x

9 March 18, 2013
10 9:25 a.m.

11 Before:

12 HON. RICHARD J. SULLIVAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: JESSICA MASELLA

AMY LESTER

18 Assistant United States Attorneys

19 ALICE L. FONTIER

Attorney for Defendant Dore

20 -and-

LAW OFFICES OF YING STAFFORD

21 BY: YING STAFFORD

22 HURWITZ, STAMPUR & ROTH

Attorneys for Defendant Barrett

23 BY: JAMES M. ROTH

-and-

24 SIMON & PARTNERS, LLP

25 BY: KENNETH C. MURPHY

D3iWdor1

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Have a seat.

4 I sent last night, I guess early evening, a revised
5 charge and a couple of alterations and I wanted to see if
6 anybody had any comments or thoughts before we go into
7 summations.

8 Anyone?

9 MS. LESTER: Your Honor, the government still objects
10 to the inclusion of the multiple conspiracies charge.

11 THE COURT: Okay.

12 MS. LESTER: We don't think it's supported by the
13 facts of the case that have been introduced at trial and also
14 we think on the law it's not necessary in a case like this and
15 will unnecessarily confuse the jury.

16 THE COURT: All right. I think we've already covered
17 that, so that's denied. But anything about the new stuff that
18 I've added?

19 MR. ROTH: Not from the defense, Judge.

20 THE COURT: All right. How are we doing with the
21 jury? Is everybody here?

22 I spoke to Ms. Schuster on Friday. That's the juror
23 whose mother is ill and is having, I think, surgery or starting
24 chemotherapy this week. In any event, she's got to leave by
25 midday, or so, on Wednesday and so, as we discussed on

D3iWdor1

1 Thursday, I've decided to excuse her. So she's not going to be
2 here today. We'll move up the first remaining alternate into
3 her spot. All right? The other jurors don't know that yet,
4 but I'll tell them. Mr. Halebua will check and then we'll
5 begin.

6 The government's using some kind of Power Point?

7 MS. MASELLA: Yes, your Honor.

8 THE COURT: That's fine. Everybody's seen it and
9 knows what's coming?

10 MS. MASELLA: We showed them the demonstrative
11 exhibit. Everything else relates directly to the evidence that
12 was presented at trial.

13 THE COURT: Anybody else using a Power Point?

14 MS. FONTIER: I am, your Honor. I just printed a full
15 copy of the slides and provided those to the government as
16 well.

17 THE COURT: So if there's any objections then we
18 should deal with those outside of the presence of the jury,
19 obviously, if we can. So no objections? The government has
20 had a chance to look at Ms. Fontier's?

21 MS. MASELLA: We have, your Honor, and we have no
22 objections.

23 THE COURT: Good.

24 Mr. Roth, you're going old school?

25 MR. ROTH: Old school. Old school.

D3iWdor1

1 THE COURT: We're going to bring in the jury.
2 Everybody set?

3 (In open court; jury present)

4 THE COURT: Okay. Have a seat.

5 Good morning, ladies and gentlemen. I hope you had a
6 nice weekend. You may notice that we're missing one of our
7 members. Ms. Schuster is no longer going to be able to
8 continue due to a family situation. With that then,
9 Ms. Belickis, you will become juror No. 12, so you should take
10 the seat in the next row.

11 Ms. Boykin, that leaves you all alone in the last row,
12 but don't give up hope yet. I would watch and make sure
13 Ms. Boykin doesn't slip something into your sandwich at lunch.
14 Ms. Boykin, you can move down if you'd like. If you're
15 comfortable, that's fine. You're kind of nicely centered. But
16 if you'd like to move down, that's also fine.

17 As I told you on Thursday, we're now going to begin
18 the summations. The evidence has concluded so we're now going
19 to hear the closing arguments of the attorneys. As I told you
20 before, closing arguments, the arguments of the lawyers, are
21 not evidence. But this is the lawyers' opportunity to give you
22 their view of what the evidence demonstrated and to make their
23 arguments about the evidence, or the lack of evidence, in the
24 case. So you should pay careful attention to those arguments.
25 They're important and they may be helpful to you as you sift

D3iWdor1

1 through the evidence. But bear in mind that nothing that the
2 lawyers say is itself evidence.

3 We'll start with the government because the government
4 has the burden of proof here. We'll then hear from each of the
5 defendants and then the government will be entitled to a short
6 rebuttal summation since, again, they have the burden of proof.
7 After we've finished the summations, I expect we'll probably
8 have lunch -- we took your lunch orders -- and then after that,
9 I will instruct you on the law. I think that will take a big
10 chunk of the day, but I do expect you'll get the case this
11 afternoon.

12 With that, I will invite Ms. Masella to give the
13 government's closing argument.

14 MS. MASELLA: Thank you, your Honor.

15 Good morning, ladies and gentlemen.

16 These two men, Jermaine Dore, otherwise known as Blaq
17 or St. Kitts, and Dwayne Barrett, otherwise known as Tall Man,
18 were the core members of a violent and dangerous robbery crew.
19 Dore and Barrett operated the robbery crew by gathering
20 detailed information about their victims, stalking their
21 victims like prey, and terrorizing them with threats, assaults,
22 and violence. They worked nearly every day for months, 12
23 hours a day at a time, in order to carry out these robberies.

24 Now, at times, the robberies generated a lot of money
25 for Dore and Barrett. You heard on some single occasions they

D3iWdor1

Summation - Ms. Masella

1 made as much as \$40,000 or \$50,000 in cash from a single
2 robbery. Other robberies did not go so well for Dore and
3 Barrett and they did not make any money on those occasions.
4 But whether or not they generated cash, make no mistake about
5 it, ladies and gentlemen, the victims that were the victims of
6 these robberies were terrorized by Dore and Barrett. They were
7 frightened, they were assaulted, and they often suffered
8 serious physical injuries as well. Some of the victims lost
9 consciousness. Some of victims ended up in the hospital. And
10 one particular victim, Gamar Dafalla, suffered the most serious
11 injury of all.

12 On December 12, 2011, Gamar Dafalla was shot and
13 killed during a robbery committed by Dore and Barrett. On that
14 day, when Gamar Dafalla refused to give up the money from the
15 cigarette transaction that he had just completed, Dore shot and
16 killed him in cold blood. And Barrett, who was the driver that
17 day, although he did not personally shoot Gamar Dafalla,
18 because of Barrett's critical role in the planning and carrying
19 out of that robbery, he too is responsible for the death of
20 Gamar Dafalla.

21 Now, part of the reason that Dore and Barrett were
22 able to be so successful in operating this robbery crew is that
23 they had an inside source, someone who provided them with
24 constant information about various victims, identifying for
25 them people who had been carrying large amounts of money,

D3iWdor1

Summation - Ms. Masella

1 giving them critical information about where the victims lived
2 or worked, and allowing them to be followed and victimized, and
3 that person you heard a lot about during this trial was Fahd
4 Hussain.

5 Fahd Hussain was the operator of that 1M Stationary
6 store in the Bronx. He had personal access to people who owned
7 businesses generating large amounts of cash, people who sold
8 telephone calling cards, people who sold cigarettes, and people
9 who sold other goods and merchandise at bodegas and other local
10 merchants. He also had friends and family connections to
11 people who had cash businesses, people who used his store at
12 the 1M Stationary store to wire transfer large amounts of
13 money, therefore giving Hussain knowledge and access to this
14 cash.

15 Dore and Barrett had a close relationship with Fahd
16 Hussain. They hung out at the 1M Stationary store nearly every
17 day. They contacted him constantly by phone call and text
18 message using their cell phones, and although not all of Dore
19 and Barrett's victims in this case were directly connected to
20 Fahd Hussain, the fact that so many of them were is even
21 further proof of the robbery conspiracy in this case.

22 Ladies and gentlemen, over the past two weeks, you
23 have heard a great deal of evidence. You have heard over 40
24 witnesses testify. You have seen a lot of physical evidence,
25 documents, phone records, and other items. And the

D3iWdor1

Summation - Ms. Masella

1 significance of some of this evidence was likely obvious to you
2 as soon as you saw or heard it. But like we said in our
3 opening statement, other parts of this evidence came in in bits
4 and pieces, and the importance of some of this evidence might
5 not have been so obvious to you when it was first presented.
6 So what I'm going to try to do during the summation is to
7 review the evidence with you, connect it to other pieces of
8 evidence in the case, and show you how it all fits together.

9 When you are able to see the whole picture that is
10 presented here, you will see that the evidence has proven
11 beyond a reasonable doubt that the defendants are guilty of all
12 the charges against them in the indictment.

13 Before I proceed, I just want to take a few moments to
14 review those charges with you. Later on today, Judge Sullivan
15 is going to give you detailed instructions about the law and
16 he's going to tell you about these charges in great detail.
17 But I just want to briefly review them with you now so you can
18 keep them in your mind as you consider and review the evidence.

19 In count one, both defendants are charged with a
20 robbery conspiracy. A conspiracy is simply an illegal
21 agreement, and the crime of conspiracy is the crime of the
22 agreement in this case. In this case, it was an agreement to
23 commit robberies. Judge Sullivan will instruct you that no
24 robberies need actually have been committed in order to fulfill
25 the conspiracy charge, but in this case, you heard proof that

D3iWdor1

Summation - Ms. Masella

1 Dore and Barrett did commit numerous robberies, and that is
2 also certainly proof of the conspiracy charge. Also keep in
3 mind that the planning for the robbery, the surveillance for
4 the robbery, and any other activities carried out in connection
5 with the robbery crimes also satisfy the conspiracy charge.

6 Counts three and five each charge Dore and Barrett
7 with a different substantive robbery, and by that I mean a
8 robbery that was actually carried out and committed by Dore and
9 Barrett. The first one is the October 29, 2011, robbery on
10 Radcliff Avenue in the Bronx that we heard so much about. And
11 count five relates to the December 12, 2011, robbery of Gamar
12 Dafalla that resulted in his death.

13 Moving on to counts two, four, and six, those counts
14 all contain firearms charges, and they are crimes related to
15 Dore and Barrett's possession, use, and carrying of firearms in
16 connection with different robbery crimes. Count two relates to
17 the conspiracy. Count four relates to the same October 29
18 robbery. And count six relates to the December 12 robbery and
19 homicide.

20 Finally, count seven is a charge for the murder of
21 Gamar Dafalla on December 12, 2011.

22 Ladies and gentlemen, you heard from two inside
23 witnesses in this case, Patrick Taylor and Janiel Brown. They
24 both told you how this conspiracy operated on a daily basis and
25 they gave compelling testimony about all of the players,

D3iWdor1

Summation - Ms. Masella

1 including the critical roles played by Dore and Barrett. They
2 told you that Dore and Barrett participated in robberies every
3 day for months, that they got much of their information about
4 the victims from Fahd Hussain. And indeed, Janiel Brown told
5 you that when she first met Dore, she thought that he actually
6 worked for Fahd Hussain because he said he was going to work
7 every day when he went to hang out at Hussain's store, the 1M
8 Stationary store, in the Bronx.

9 These witnesses told you about the means and the
10 methods used by Dore and Barrett and the robbery crew to carry
11 out the robberies, that they often followed their victims for
12 days ahead of time in order to learn their routes and the
13 locations that they went, carrying large amounts of cash; that
14 they stalked them and picked the optimal time to rob them.
15 They also told you about the tools of the trade used by Dore
16 and Barrett to carry out these constant robberies. They
17 described the cars that were most often used by the robbers:
18 Barrett's dark blue Mercedes; Janiel Brown's Isuzu Trooper; and
19 other rental cars that were rented by Fahd Hussain. They
20 described the weapons that were kept and used by Dore and
21 Barrett, including knives, baseball bats, and guns. They told
22 you that the robbers usually wore masks or gloves and that they
23 often obtained these masks and gloves from the same store, Fahd
24 Hussain's 1M Stationary store, in the Bronx. They told you
25 that Dore and Barrett were in constant contact with Fahd

D3iWdor1

Summation - Ms. Masella

1 Hussain over their cell phones in order to receive and transmit
2 critical information about the victims that they were stalking.

3 Now, I want to take a moment to say a few words about
4 these witnesses. When I talk about inside witnesses, they're
5 inside because they can give you very valuable information
6 about the other members of the robbery crew and the defendants
7 and what they did in this case. But because both Patrick
8 Taylor and Janiel Brown themselves participated in these crimes
9 with the defendants, they are able to give you an especially
10 detailed and compelling view of exactly what happened every day
11 in the course of this robbery conspiracy. They're able to tell
12 you how the robberies were planned. They're able to tell you
13 what the defendants told them about other robberies that they
14 were not a part of, and they're able to tell you what they
15 directly saw and heard happen during the course of the
16 robberies that they were present for.

17 Now, you heard the defense lawyers in this case
18 cross-examine these witnesses at great length. Those were the
19 longest cross-examinations in the case. And I expect that you
20 will hear a lot from the defendants' lawyers during their
21 summations about these witnesses and their credibility, and
22 they're going to criticize the credibility of these witnesses.

23 The government agrees that you should carefully
24 scrutinize these witnesses' testimony and their credibility and
25 carefully weigh their credibility as it matches up or measures

D3iWdor1

Summation - Ms. Masella

1 up against the other testimony in the case. But as you do so,
2 I want to suggest three important things for you to consider in
3 weighing these witnesses' testimony.

4 First, recall the witnesses' demeanor on the witness
5 stand. How did they answer questions on direct and
6 cross-examination? Did they appear evasive, or did they answer
7 directly? Did they answer questions the same way on direct
8 examination and cross-examination? If you think about these
9 things, I think you will find that the witnesses testified in a
10 candid and straightforward manner, that they did not dodge
11 questions. They were not evasive. They did not overexaggerate
12 their knowledge or their memory of events. They did their best
13 to provide truthful and accurate answers to all of the
14 questions that were presented to them and they made no bones
15 about the fact that they had each committed crimes in the past.

16 Second, you should consider these witnesses'
17 incentives to tell the truth versus to lie here in their
18 testimony. Both Patrick Taylor and Janiel Brown told you that
19 they had signed agreements with the government. Patrick Taylor
20 has a cooperation agreement with the government and he's
21 pleaded guilty to various crimes in connection with his work
22 with this robbery crew as well as other crimes. Janiel Brown
23 told you that she received a nonprosecution agreement from the
24 government. Both witnesses were clear in telling you that they
25 had significant benefits from the government if they tell the

D3iWdor1

Summation - Ms. Masella

1 truth. They also told you that they get nothing from the
2 government if they lie. They told you that their agreements
3 get ripped up, that they could get prosecuted for perjury, and
4 they get no benefit at all in connection with their criminal
5 conduct.

6 Although both Patrick Taylor and Janiel Brown admitted
7 to telling certain lies to law enforcement in the past,
8 remember that back then their motives were different. Back
9 then, they were trying to deflect attention from themselves and
10 they were trying to get away with criminal conduct. They were
11 certainly trying at that time to act in their own
12 self-interests, which you'll remember was the focus of some of
13 the defense counsels' cross-examination of these witnesses.
14 But now, under their agreements with the government, the only
15 thing in their self-interests is to tell the truth. So as you
16 consider their testimony, ladies and gentlemen, ask yourselves
17 which way their incentives cut, their own self-interests, and
18 ask yourselves which way they should be motivated to testify in
19 this case. And if you do that, you'll find that they are
20 telling the truth.

21 Third, as you consider these witnesses' testimony,
22 think about the corroboration of their testimony. And by
23 corroboration, I simply mean significant other independent
24 evidence that is consistent with what these witnesses testified
25 to. The government is not asking you to believe these

D3iWdor1

Summation - Ms. Masella

1 witnesses in a vacuum. Instead, we're asking you to think
2 about their testimony carefully, look it over, and compare it
3 to the other evidence in the case, and consider whether it
4 matches up with the other evidence.

5 Now, throughout the closing, as I go through different
6 robbery incidents, I'm going to talk about many different
7 examples of corroboration, but I just wanted to highlight a few
8 here so that you know exactly what I mean.

9 Take Janiel Brown's testimony for a moment. She
10 testified that Dore worked with Barrett to commit robberies,
11 and she said that Dore referred to robberies as a job, a food,
12 or on the move. And when we looked at some of the text
13 messages in her phone, we found messages from Dore that said,
14 "We're going to do a job now," or "We're on the move now."
15 Now, the reason these messages are so important is because they
16 corroborate her testimony, that Dore was involved in robberies,
17 first of all, and second of all, that he communicated directly
18 with her about those robberies at the time they were occurring.
19 So they show that she had knowledge at the time the robberies
20 were committed, that she received text messages directly from
21 Dore about them, and that, therefore, her testimony here about
22 those robberies is credible and it's something you can rely on.

23 Let's look at Patrick Taylor's testimony for a moment.
24 Patrick Taylor told you that before he even met Dore and
25 Barrett around September 2011, they told him about robberies

D3iWdor1

Summation - Ms. Masella

1 that they had done of two other people. They told him that the
2 victims were of related businesses, one was in Westchester and
3 one owned a gas station in Pennsylvania. Barrett and Dore told
4 Taylor that they had robbed those two individuals during the
5 summer of 2011, and that they had made approximately \$40,000
6 during one robbery and \$60,000 during another robbery.

7 Now, ladies and gentlemen, recall the testimony here
8 of Abdul Rauf, who was the victim of the Pennsylvania robbery.
9 He told you that he was robbed during 2011. He told you that
10 it was approximately \$46,000 that he lost during the course of
11 that robbery, and that he's the owner of a gas station in
12 Pennsylvania, and that his business partner, the owner of the
13 Bronx Trading Company, was robbed in Westchester County a few
14 days beforehand, and he told you that that robbery was a loss
15 of approximately \$56,000, for his business partner.

16 This is corroboration. What Patrick Taylor's told you
17 that he learned from Dore and Barrett about these robberies is
18 independently corroborated by what you heard from the
19 Pennsylvania victim, Abdul Rauf. There's no reason at all that
20 Abdul Rauf would not be telling you the truth here in court
21 when he testified about being a victim of that robbery. And
22 there's no reason at all that he and Patrick Taylor, who
23 otherwise have nothing in common, would somehow come up with
24 the same story, unless it were true. So the only logical
25 conclusion, ladies and gentlemen, is that these two witnesses

D3iWdor1

Summation - Ms. Masella

1 are both telling you the truth about those robberies.

2 Another reason that this corroborates Patrick Taylor's
3 testimony as a whole is that it proves to you that he was an
4 integral and important member of this robbery crew who had
5 detailed knowledge about what Dore and Barrett were doing on an
6 everyday basis during the time period that he talked about. He
7 not only testified about robberies that he was present for, but
8 this testimony about the Pennsylvania robbery demonstrates that
9 he knew the truth about other robberies, even those that he was
10 not present for. It shows you that he was truly an insider and
11 a member of this conspiracy and that Dore and Barrett told him
12 important, detailed, critical things about the workings of that
13 conspiracy, even for the incidents at which Patrick Taylor was
14 not present.

15 Now, ladies and gentlemen, in a moment, I'm going to
16 start to walk through the proof of the robbery conspiracy and
17 the various incidents you heard so much about during this
18 trial. But before I do that, I want to take a quick moment to
19 look at the phone evidence because it's going to be important
20 as a foundation for much of the other evidence you'll hear. In
21 this case, you heard about cell site evidence and phone records
22 from a lot of witnesses in great detail. You heard from the
23 government's FBI witness who was the one who provided the
24 summary maps and charts to help you analyze the phone evidence.
25 But before you can truly appreciate the strength of the

D3iWdor1

Summation - Ms. Masella

1 government's phone evidence, you have to first understand how
2 the government ties each of these relevant phones to the
3 defendants. After all, it might not surprise you to learn that
4 the defendants did not subscribe to cell phones in their own
5 names. And you also heard from Janiel Brown that Dore
6 frequently changed his phone number and used different phones
7 during the several-month period that she knew him. So, if we
8 look at slide three, this is the phone number, 347-883-8414,
9 that was used by Dwayne Barrett throughout this time period,
10 and he pretty much used the same phone number at all times
11 during this period, so it's going to be easy to remember his
12 phone number, 8414.

13 There are several different ways that we know that
14 this is Dwayne Barrett's phone number. He provided it to the
15 New York Police Department during the November 14 car stop.
16 Now, that was the occasion when he was stopped by officers
17 Villanueva and Segarra when he was following Jesse Singh, the
18 gas station owner, and they asked him for identification and
19 they asked him for his driver's license and phone number, and
20 that's the phone number he provided that day, November 14.
21 It's also the same phone number that was on the phone that was
22 seized by the police when he was questioned on January 9 of
23 2012, and that phone was kept by the police at that time. And
24 so after January 9, Dwayne Barrett got another phone, which was
25 seized on January 19, when he was arrested in connection with

D3iWdor1

Summation - Ms. Masella

1 this case. And it had the same phone number, ending in 8414.
2 And if you're wondering, just on the slides where we have an
3 exhibit or a transcript cite, that is just where that material
4 might be found. So Government Exhibit 87 is the actual phone
5 that was taken by the police on January 9. 87A is the CD
6 containing the contents of that phone, and the same for
7 Government Exhibits 83 and 84.

8 If you look at the next slide, these are two different
9 cell phone numbers used by Jermaine Dore during this period,
10 the first one ending in 5031. Remember we heard testimony
11 about this when Janiel Brown testified. This was one of the
12 numbers that she had text messages, numerous text messages
13 going back and forth with Jermaine Dore, and she remembered
14 this phone number, that that was the one used by Jermaine Dore.
15 Second, it was also listed in her phone seized by the agents,
16 Government Exhibit 73, and it was listed under the designation
17 Hon, which is what she testified she referred to him as.

18 The next phone number, 3929, was listed in two of
19 Dwayne Barrett's phones as Blaq, which is the name that we know
20 that the other coconspirators referred to Jermaine Dore by. So
21 it's listed in the January 9 phone that was seized as well as
22 the January 19 phone.

23 If we look at the next slide, now, you heard a lot of
24 testimony about Biggs, another coconspirator in this case, and
25 he is not a defendant here on trial, but the reason that his

D3iWdor1

Summation - Ms. Masella

1 phone numbers are important is because there are going to be
2 certain incidents in which you hear testimony that Biggs is
3 present, and Biggs is another one of the robbers, and his phone
4 number is going to show up at those same incidents, so let's
5 briefly review his phone numbers.

6 There are two of them, one ending in 3565, which is
7 listed in Barrett's contacts as Biggs, the name that they all
8 knew him by, and, second of all, this is the phone that is
9 actually found at the scene of the New Rochelle robbery. You
10 heard all those New Rochelle police officers testify about a
11 phone that was found right outside the victim's car on the
12 ground and this is the phone that was dropped by Biggs at the
13 scene of that robbery.

14 Finally, the last phone number for him ending in 5867
15 was listed in Janiel Brown's contacts as Biggs, and she
16 testified that she had the phone number for a number of the
17 members of this robbery crew so that she could get in contact
18 with Dore if he wasn't answering his phone or they could get in
19 contact with her.

20 Now I want to turn to looking at the proof of all the
21 various robbery incidents that you've heard during the course
22 of this case. Keep in mind that all of these incidents are
23 proof of a conspiracy charged in count one and that the October
24 29 and December 12 robberies are also charged separately as
25 substantive crimes.

D3iWdor1

Summation - Ms. Masella

1 Now, ladies and gentlemen, I don't think it's
2 seriously in dispute that these robberies occurred and that the
3 victims suffered real fear, threats, violence, and in some
4 cases injuries. It's not in dispute that their property was
5 taken, that their property was taken by force or threat of
6 force, and that that property at times included their business
7 proceeds and that some of these individuals are engaged in what
8 is known as interstate commerce or commerce including sources
9 outside of New York State. So I'm going to focus, as we go
10 through the incidents, on the proof that Dore and Barrett
11 committed each of these robberies.

12 Turning now to the first incident that you heard
13 about, which is a robbery in Matamoras, Pennsylvania, of a
14 victim named Abdul Rauf, on August 22, 2011, early in the
15 afternoon, Abdul Rauf was robbed as he walked from his gas
16 station, the Go 24, to the local bank, the Wells Fargo Bank.

17 If we can have the next slide, please, this is where
18 it all started, ladies and gentlemen. This is a photo of Abdul
19 Rauf's gas station, the Go 24. He testified that he made
20 weekly cash deposit trips to the bank, that that day he was
21 carrying approximately \$46,000, which is about half of the
22 normal amount of business proceeds. He testified that he
23 usually carried 80,000 to a hundred thousand dollars every
24 Monday morning, but on this occasion, because his related
25 business, the Bronx Trading Company, had been robbed two days

D3iWdor1

Summation - Ms. Masella

1 prior, he had kept back half of the cash in the office so that
2 he could take it back to the Bronx Trading Company and help
3 them restart their business.

4 Abdul Rauf told you he was assaulted by two robbers in
5 the parking lot that day, the parking lot of the Wells Fargo
6 Bank, and that they took his bag full of cash. Rauf also told
7 you important information about his connections to Fahd
8 Hussain. He told you that he had known Fahd Hussain for years,
9 that he had trusted him as a personal friend and business
10 associate, and that he had done several cash transactions with
11 Fahd Hussain in recent months.

12 In particular, Abdul Rauf told you that Fahd Hussain
13 had come to the Go 24 on five or six previous occasions and
14 given him a check and, in return, Abdul Rauf had given him
15 several thousand dollars in cash, anywhere from \$4,000 to
16 \$6,000. So you know from this, ladies and gentlemen, that Fahd
17 Hussain knew and understood that Abdul Rauf had a cash business
18 at the Go 24, that he generated a lot of money in cash
19 proceeds, and that he kept a lot of cash on hand in his office
20 there. You can infer from that that Hussain told Dore and
21 Barrett that and that Dore and Barrett may have even known
22 about Abdul Rauf's weekly Monday morning trips to the bank.
23 And reason I say that is because when you put together the
24 testimony of Abdul Rauf with Janiel Brown, which I'm get to in
25 a moment, it's clear that they knew about his trip to the bank

D3iWdor1

Summation - Ms. Masella

1 and that they were watching him, surveilling him for some
2 period of time.

3 Let's remember what Janiel Brown said about this
4 robbery. Remember, she testified that this was the first
5 robbery that she was present for. She didn't have an
6 understanding of what was going on at the beginning of that
7 day, but by the end of the day, it was clear to her that
8 Jermaine Dore and Dwayne Barrett had participated in a robbery.

9 Now, what are the important things that you learned
10 from her testimony? You learned that Barrett and another
11 coconspirator, Duff or Duffel, drove out to Matamoras,
12 Pennsylvania, in his car; that Janiel drove Dore in his car;
13 that they met up there. They arrived in the early morning
14 hours and they waited in the area of a gas station and a
15 supermarket for several hours. She told us that Dore went back
16 and forth between her car and Barrett's car, and that at some
17 point Dore quickly took off with Barrett and Duff. And the
18 next thing she knows, she receives a phone call a short time
19 later telling her to go back to New York City. And when she
20 gets back to New York City, she learns that Dore has a lot of
21 cash. She estimates it to be about \$15,000, which, when you
22 think about it, is about a three-way split from the 40,000 that
23 Abdul Rauf lost during that robbery. So although she doesn't
24 see what happened at the exact moment of the robbery, when you
25 match it up together with the testimony of Abdul Rauf, the

D3iWdor1

Summation - Ms. Masella

1 victim, it fits in perfectly with what he says and it makes
2 sense. It's clear that Barrett, Duff, and Dore were watching
3 Rauf, or his business, for hours; that they were waiting for
4 him to leave the Go 24 Gas Station to make his weekly deposit
5 trip to the bank, and, once they saw him move, they jumped on
6 him. They approached him, grabbed his money, and took his
7 \$46,000, and later that day they split the proceeds
8 approximately three ways so that each of the robbers got
9 \$15,000.

10 Ladies and gentlemen, this testimony alone would be
11 devastating proof of that robbery, but there's even more
12 evidence. If you look at this map, this is a cell site map
13 that the government's witness, David Magnuson, presented to you
14 during his testimony. Now, remember, this is what we're
15 looking at. The cell number ending in 8414 is that number that
16 was used by Dwayne Barrett throughout the course of this
17 conspiracy. This map shows his phone using a cell tower a
18 short distance away from the Wells Fargo Bank in Matamoras,
19 Pennsylvania. It shows that he was there on August 15, for
20 approximately two hours.

21 The cell site map is devastating evidence, ladies and
22 gentlemen. It puts Barrett exactly at the scene of this
23 robbery, a small town, miles away, a remote distance from New
24 York City, for hours on end, the same hours during which
25 they're surveilling the victim and waiting for him to leave his

D3iWdor1

Summation - Ms. Masella

1 business to make his trip to the bank. There's no other
2 explanation for Barrett's phone to be in this area at that time
3 other than that he was conducting a robbery during that time.

4 There's even more evidence, ladies and gentlemen. If
5 we turn to the next page, this is a segment of text messages on
6 Janiel Brown's phone, and remember, these take place in
7 December after a fight with Janiel Brown and Jermaine Dore.
8 And after this fight, Janiel Brown told you that she was
9 threatening to call the police on Dore and tell them about him
10 being a robber, and he threatens back. He threatens to call
11 the police, and he says, and this is the second line down,
12 "Just so you know, if you call them, I will tell them you was
13 my driver." And if you look down further to the second one
14 from the bottom, "Good, and tell them just know if they come to
15 my, I will tell them about PA and the other."

16 Ladies and gentlemen, he's talking about Pennsylvania.
17 He's talking about the Pennsylvania robbery. I will tell the
18 police that you were my driver. I will tell the police about
19 Pennsylvania. This is direct proof, ladies and gentlemen, that
20 Janiel Brown was present at that robbery, that she knows that
21 Dore participated, and he admits that he participated by
22 saying, Just so you know, I will tell them you was my driver.
23 He wasn't saying he wasn't there, he didn't do it. This is
24 devastating proof that the robbery in Pennsylvania happened
25 exactly the way Janiel Brown said that it did.

D3iWdor1

Summation - Ms. Masella

1 I want to turn now to the next incident that we heard
2 about, which was on November 14, 2011. The witnesses testified
3 here about this incident, it was Jesse Singh, the victim, and
4 the officers were police officers Villanueva and Segarra from
5 the 52nd Precinct. What they told you about was a robbery
6 stopped just in the nick of time. This was a robbery stopped
7 due to an observant victim, who was being very careful, and the
8 fact that he had a personal relationship with police officers
9 who happened to be in the area.

10 So, remember, Jesse Singh was the manager of that gas
11 station in Mount Vernon. He was traveling from that gas
12 station in Mount Vernon to the related gas station in the
13 Bronx, and he was carrying with him anywhere between \$25,000 to
14 \$30,000 in cash that day. As he was driving his route, he
15 noticed a dark-colored Mercedes driving very erratically behind
16 him. He noticed that it pulled over to the side of the road
17 every time he stopped for a light. He noticed that it followed
18 him through several lights. It followed him on to the highway,
19 it followed him off of the highway, and every time he looked
20 behind him, that dark-colored Mercedes was still there. So
21 Singh, who had been a business person in that community for
22 nearly 18 years, called some police officers that he knew,
23 including Officer Villanueva, who knew Jesse Singh from his
24 business in that area, and he told him what was happening, and,
25 as a result, they pulled over the car. Which car does it turn

D3iWdor1

Summation - Ms. Masella

1 out to be, ladies and gentlemen? It turns out to be the same
2 dark blue Mercedes that we've heard so much testimony about in
3 this case, the one with the license plate FMB7467, the one
4 driven by Dwayne Barrett every day for months and registered in
5 the name of his girlfriend, Felicia Lake.

6 On that day, the officers identified the passengers in
7 the car. They identified Dwayne Barrett as the driver, and
8 Jermaine Dore is present there but gives a fake name. He uses
9 the name Jermaine Otto. The officers search the car and they
10 find baseball bats and a mask inside the car, and while Officer
11 Villanueva had the distinct impression that something was wrong
12 and that a robbery was in progress, given how frightened Jesse
13 Singh sounded and what he found inside the defendant's car, he
14 didn't see enough to arrest anyone that day, so he let them go
15 on their way.

16 But later, from another witness, we hear the inside
17 view of this incident. Patrick Taylor told you that he was
18 talking to Dwayne Barrett and Jermaine Dore later that day and
19 they told him about it. They told him that they were stopped
20 that day by the police while they were on their way to do a
21 robbery. They told him that the victim was the owner of a gas
22 station in Mount Vernon and that they had followed him from the
23 gas station in Mount Vernon. He also told you that when they
24 were stopped, Jermaine Dore gave a fake name, and they were
25 even joking about the fact that Jermaine Dore cooked up his

D3iWdor1

Summation - Ms. Masella

1 name and that he couldn't even remember how to spell it.

2 I want to turn to the next incident that you heard
3 testimony about, which was a robbery of Youssef Abdulkader.
4 This occurred on October 10, 2011, on Wallace Avenue, in the
5 Bronx, near Allerton and Arnow.

6 Now, remember Abdulkader is the owner of a convenience
7 store. He testified he's known Fahd Hussain for many years and
8 that Hussain knows where his home is. And he testified that on
9 October 10, 2011, the day of the robbery, he was traveling from
10 his store to his home, around midnight, which is what he
11 usually did nearly every day. He told you that he parked near
12 his home, and, as he was walking down the street, he noticed
13 two individuals were sitting there almost as if they appeared
14 to be waiting for him. He told you that he was approached by
15 the two robbers, that one of them had a knife, and that he was
16 so afraid he dropped his bag and ran off. And that bag
17 contained his cell phone, his personal cell phone, and his
18 laptop computer.

19 If you look at the next slide, now, ladies and
20 gentlemen, these are items found on Government Exhibit 72.
21 Government Exhibit 72 is a cell phone. It's a cell phone that
22 was seized from Jermaine Dore's apartment at the time of his
23 arrest in this case. That was January 19, 2012, three months
24 after the robbery of Youssef Abdulkader. The left side of the
25 slide shows photos of Youssef Abdulkader, which were contained

D3iWdor1

Summation - Ms. Masella

1 on that phone, Exhibit 72. The right side shows photos of
2 Jermaine Dore and his girlfriend, Janiel Brown. Janiel Brown
3 also testified that she recalled Jermaine Dore using that phone
4 to make phone calls and to take photos and for other things you
5 would use a phone for.

6 Ladies and gentlemen, this exhibit alone is
7 devastating proof of that robbery. There's no other reasonable
8 explanation for Jermaine Dore to have this phone in his
9 apartment three months after the robbery of Youssef Abdulkader
10 and no other reason why this photo should be on that phone.

11 There's even further evidence of this incident. If
12 you look at this map, this is a cell site map showing that
13 number 3565, which is the number used by Taijay Todd, or Biggs
14 rather, and 3929, a number used by Jermaine Dore. On October
15 10, 2011, 20 minutes before midnight, which is the date and
16 time of the robbery and theft of Youssef Abdulkader, it shows
17 these two members of the robbery crew using a cell tower a
18 block and a half away from where the robbery happened. Again,
19 there's no other reasonable explanation for this but that those
20 two were together at that time on that date about to carry out
21 the robbery of Youssef Abdulkader.

22 Now, ladies and gentlemen, I want to talk to you about
23 the October 29, 2011, robbery, which is that snowy day robbery
24 on Radcliff Avenue that you heard a lot of testimony about from
25 a lot of different sources. Remember that there are two

D3iWdor1

Summation - Ms. Masella

1 relevant locations for this robbery. The victim himself, the
2 first victim, Ahmed Salahi, is picked up outside a mosque on
3 Rhineland Avenue and that his house keys are taken and that
4 his house on Radcliff Avenue is home invaded and monies are
5 taken from there. Ahmed Salahi and Kassim Salahi, the two
6 victims in this case, remember, are brothers. They're brothers
7 who own several live poultry markets in the Bronx.

8 Kassim testified he's known Fahd Hussain for many
9 years and he testified he had used Fahd's stores from which to
10 send large cash transactions or wire transfer transactions back
11 to family members in Yemen on several occasions. So, from
12 that, ladies and gentlemen, you know that Hussain knew that the
13 Salahis had a business, that the business generated cash
14 proceeds, and that the cash proceeds might have been kept in
15 their home locations.

16 Ahmed Salahi testified that on Saturday, a Saturday in
17 October, that Saturday in October, October 29, he was in his
18 house from approximately three p.m. to six p.m. and that his
19 house was located at 2532 Radcliff Avenue in the Bronx. Then,
20 he went to a local mosque on Rhineland Avenue and White
21 Plains Road for evening prayers that day and that he was there
22 from about 6:00 until 6:30.

23 If you look at slide 16, this is a photo of the house
24 on Radcliff Avenue in the Bronx. If we look at the next slide,
25 this is the same phone number, ladies and gentlemen, we looked

D3iWdor1

Summation - Ms. Masella

1 at many times already, the phone number 8414, the phone number
2 used by Dwayne Barrett throughout this time period. What this
3 map is showing us is if you look at the upper circle, the one
4 up here, that represents 2532 Radcliff Avenue, which is the
5 residence location of Ahmed Salahi in the Bronx. If you look
6 at the title on this, we can tell from this evidence that
7 Dwayne Barrett's cell phone was using a cell tower only a block
8 away from that residence, between the hours of 1:24 and 5:36
9 p.m., four hours, ladies and gentlemen. For four hours, Dwayne
10 Barrett was essentially sitting outside of that residence on
11 Radcliff Avenue in the Bronx, waiting for the victim to leave
12 and waiting for an opportunity to carry out that robbery.

13 We've heard about this also from Patrick Taylor. You
14 heard that he was on Radcliff Avenue for hours that afternoon.
15 He told you that he was there with Dwayne Barrett and also
16 another coconspirator, Jaba, who helped him carry out that
17 robbery. He told you that they had tried to carry out a
18 robbery of this residence on a prior location late in the night
19 and that it had failed because the neighbors had noticed too
20 much commotion in the backyard.

21 So what did they do? On this day, they go back, and
22 they decide to sit outside the victim's house and wait, wait
23 for the victim to leave so that they can get him, get his keys,
24 and enter the house without causing any disruption. So this is
25 proof of that, ladies and gentlemen. This is proof that

D3iWdor1

Summation - Ms. Masella

1 they're sitting outside the house for almost at least four
2 hours on that day. And I just want to remind you that when you
3 see 1:24 p.m. through 5:36 p.m., we can only put the cell phone
4 using the cell tower at times during which Dwayne Barrett was
5 actually using the phone. So, in other words, he may have been
6 there for even longer. But what we can tell from this exhibit
7 is that he was at least there between 1:24 and 5:36, four
8 hours' waiting time. What happens after that? Around that
9 time, Ahmed Salahy goes to the local mosque on Rhineland
10 Avenue in the Bronx.

11 If you look at the next slide, this is another cell
12 site map for Barrett's phone, 6:44 p.m. through 7:21 p.m.,
13 showing that Barrett is using a cell tower that is literally on
14 top of the same corner as where the mosque is located on
15 Rhineland Avenue and White Plains Road. What does this tell
16 you, ladies and gentlemen? This tells you that Barrett
17 essentially followed the victim. He followed the victim from
18 Radcliff Avenue to Rhineland Avenue as the victim went to the
19 mosque for evening prayers. That's roughly the same time that
20 Ahmed Salahy told you he was at the mosque and Barrett's phone
21 was right there, right on that corner, watching the victim.

22 Both Ahmed Salahy and Kassim Salahy told you what
23 happened after that. Ahmed was attacked in his own car as he
24 was leaving the mosque. He was held down in his car, jammed
25 between the seats of his minivan, and held down by two robbers,

D3iWdor1

Summation - Ms. Masella

1 one with a gun, one with a knife. After a short distance, a
2 short distance driving, Ahmed told you that one of the robbers
3 got out of the car, that they took his keys, and that that
4 robber left while the other robber held him down at knifepoint
5 for 15 or 20 minutes.

6 In the meantime, his brother, Kassim Salahi, is inside
7 his house. Ahmed doesn't know that at that point because when
8 he left the house it was empty. But it turns out that Kassim
9 and his two sons were in Ahmed's house waiting for their
10 brother and uncle to come home and waiting to share Saturday
11 evening dinner together and they're expecting Ahmed to come to
12 the door and when the door opens, the kids run over to greet
13 their uncle and instead they find two robbers at the door.

14 Now, remember what we learned from Patrick Taylor
15 about this incident? Patrick Taylor heard about it the same
16 day. Patrick Taylor was there as a lookout in a car nearby on
17 Allerton Avenue, which is the cross-street, and he doesn't see
18 what happens inside the house, but as soon as the robbery's
19 over and the group gathers to divide the proceeds and talk
20 about what happened, Patrick Taylor gets a detailed version of
21 what happened that day. What Patrick Taylor says is that Dore
22 is the first robber to approach that house, used the keys to
23 get in, but he sees the kids and the commotion inside the
24 house. Remember, he was expecting the house to be empty. And
25 he goes back, essentially closes the door and goes back for

D3iWdor1

Summation - Ms. Masella

1 reinforcement. And who does he get? Dwayne Barrett.

2 Now, this is important because remember Kassim
3 Salahi's description of the second robber. He said that the
4 second robber was so tall that he literally had to stoop over
5 to fit inside the doorway of their basement apartment and that
6 when they were standing there in the basement he had to bend
7 his head down because he was too tall to fit inside. That's
8 Dwayne Barrett, ladies and gentlemen. We've all seen him stand
9 up in this courtroom and we know he's approximately six seven
10 or six eight in height.

11 Patrick Taylor told us other valuable information
12 about the robbery which lines up exactly with what the victims
13 said. He said that Dore and Jaba are the ones that ran up on
14 Ahmed Salahi in his car. He said that they took his keys and
15 that Jaba held Ahmed Salahi down at knifepoint while Dore got
16 out to conduct the robbery. He said Dore went back to get
17 Barrett's help, which is corroborated again by Kassim Salahi's
18 description of the robber who was so tall he had to stoop
19 through the doorway.

20 We also know from Patrick Taylor that he saw Dore with
21 a gun that day. He saw Dore inside Tall Man's car, Barrett's
22 car, earlier that day with the same nine millimeter, black with
23 a wood handle, that we've heard so much other testimony about
24 in this case and the two victims in the case testified, Ahmed
25 Salahi said he saw one gun and one knife. And Kassim Salahi,

D3iWdor1

Summation - Ms. Masella

1 the victim inside the house, testified that he saw each of two
2 robbers, Dore and Barrett, each holding guns when they were
3 inside the house rummaging for money. We know from the victim
4 that they took about \$15,000 in business proceeds, and Patrick
5 Taylor told you that he got approximately \$1,000 of that and
6 that he saw Dore and Barrett and Jaba get their share of the
7 money after the robbery when they were back dividing up the
8 money.

9 Now, ladies and gentlemen, I want to turn next to the
10 Mount Vernon robbery and homicide of Gamar Dafalla. I want you
11 to recall that this is not only part of the conspiracy charge
12 but is also separately charged as a substantive robbery and it
13 also has a separate firearms charge and a murder charge
14 associated with it. This is obviously an important incident in
15 this case and you have heard a lot of different types of
16 evidence and testimony about it. And it's important to look at
17 how all the evidence fits together and especially important to
18 understand the precise chronology of what happened that
19 morning.

20 So, in a moment, I'm going to walk through the
21 different evidence that demonstrates the chronology and the
22 time line, but for now, I want to take a moment just to focus
23 on the timing of what happened that morning. It's important
24 because it tells you exactly what happened that day, about how
25 Barrett, Dore, and their other coconspirator, Biggs, planned to

D3iWdor1

Summation - Ms. Masella

1 rob Gamar Dafalla, and how he was killed when the robbery went
2 bad.

3 Now, if you look at this, if you look on the left-hand
4 side, the red box near the top, 10:30 to 10:34 a.m., the
5 evidence places Dore near the Riverroad Motor Inn, and at the
6 same and overlapping time, 10:09 to 10:32, the evidence places
7 Barrett near the Riverroad Motor Inn. And if you look at the
8 next box down, the orange one on the left, 10:32, that's the
9 time when Gamar Dafalla, the victim, is checking out of the
10 Riverroad Motor Inn. So all three individuals, Dore, Barrett,
11 and Gamar Dafalla, are all at the Riverroad Motor Inn at
12 exactly the same time that morning.

13 Now, if you look at what happens next, these boxes are
14 on the right. 10:38 to 10:57, Barrett is near 267 South Fourth
15 Avenue in Mount Vernon, which is the scene of the later robbery
16 and the car jacking of Gamar Dafalla. At 10:45 we have Biggs
17 in that area, and at 10:57, we have Dore in the same area, 267
18 South Fourth Avenue in Mount Vernon. This cluster on the right
19 shows you where the victim, as well as Barrett, Dore, and
20 Biggs, all travel from the Riverroad Motor Inn to South Fourth
21 Avenue in Mount Vernon. A few minutes later, the Toyota Sienna
22 minivan containing Gamar Dafalla and the two robbers speeds
23 away from South Fourth Avenue in Mount Vernon. Approximately
24 50 minutes later, police officers discover Gamar Dafalla's body
25 in the back of that Toyota Sienna, which is still running,

D3iWdor1

Summation - Ms. Masella

1 parked on a street corner, Strang and Duryea Avenue, in the
2 Bronx, and a short time after that, approximately an hour
3 later, Dore returns to the scene of Strang and Duryea Avenue in
4 the Bronx.

5 So I just want you to focus on this for one moment,
6 the chronology, and then I'm going to walk through with you the
7 evidence that supports each of these items on here.

8 If we look at the next slide, this is the Riverroad
9 Motor Inn. This, remember, is the place, 4225 Webster Avenue,
10 where the taxi driver, Mr. Liang, told you that he dropped off
11 Gamar Dafalla the night before the robbery and the murder, and
12 he picked him up that morning around nine or ten a.m. He told
13 you that they were there for some period of time loading up
14 cardboard boxes with cartons of cigarettes -- those were the
15 untaxed cigarettes that were the transaction that occurred
16 right before the murder -- and that they were carrying those
17 large boxes of cigarettes out to Mr. Liang's minivan.

18 Now, remember, the hotel clerk, Sterlin Sahadeo,
19 testified here and told you that he clocked out the victim
20 Gamar Dafalla from the Riverroad Motor Inn at exactly 10:32
21 that morning. That's Government Exhibit 536, which is in
22 evidence, and if you turn it over to the back side, it has the
23 time clock stamp on the back of that showing the clock-out time
24 at 10:32.

25 If we look at the next slide, this is a cell site map

D3iWdor1

Summation - Ms. Masella

1 for that same phone number, 8414, used by Dwayne Barrett
2 throughout the case, on December 12, 2011, from 10:09 to 10:32
3 showing him using a cell tower that is again only a couple
4 blocks away from that location. The location is a spot on the
5 map up here. It's 4225 Webster Avenue. That's the Riverroad
6 Motor Inn. During this time period, there's Barrett using his
7 phone a short distance away, watching the victim as he and the
8 taxi driver load up the van with those untaxed cigarettes.

9 If we look at the next slide, also December 12, 2011,
10 from 10:30 to 10:34, this is the 5031 number used by Jermaine
11 Dore, and again, this is the location of the Riverroad Motor
12 Inn, and there's the cell tower a short distance away. Dore
13 and Barrett are together. They're together at the Riverroad
14 Motor Inn and they're watching Gamar Dafalla and Mr. Liang, the
15 taxi driver, load up the van and waiting for them to leave.

16 What happens after this? Dafalla and Liang travel
17 together to the area of Mount Vernon. Mr. Liang told you that.
18 They pick up Jamal Abdulla, the other witness that day, in the
19 area of 267 South Fourth Avenue, which is Abdulla's store
20 location. Abdulla then goes on to conduct a cigarette
21 transaction a few blocks away, which generates about \$10,000 in
22 cash proceeds, and then the three of them return, Mr. Liang,
23 Jamal Abdulla, and Gamar Dafalla. They return inside the
24 minivan to South Fourth Avenue where they start counting the
25 money from the transaction.

D3iWdor1

Summation - Ms. Masella

1 If we look at the next slide, this is a video, ladies
2 and gentlemen. If you look at it, this is Dwayne Barrett's
3 Mercedes.

4 (Video recording played)

5 MS. MASELLA: In a moment, we're going to see a car
6 with the license plate readers owned by George Drape pull by,
7 the license plate readers that captured Dwayne Barrett's
8 license plate. There it is, and you see on the back of that
9 car the license plate readers that George Drape testified
10 about. This is Jermaine Dore getting out of the Mercedes and
11 walking around the area. And Barrett, in the Mercedes, is
12 waiting.

13 If we look at the next slide, this is the information
14 from the license plate reader. Remember, this is what George
15 Drape testified about. On 12/12, 2011, at approximately 10:54,
16 his license plate readers, mounted on top of the car that we
17 just saw in the video, drove by the Mercedes and captured this
18 license plate, FMB7467, the same license plate on Dwayne
19 Barrett's dark blue Mercedes.

20 If we look at the next slide, if there is any doubt
21 about whose car this is, we also saw the DMV registration from
22 the DMV witnesses. It was registered in the name of Felicia
23 Lake, and we heard from the agent who was present for the
24 arrest of Dwayne Barrett that Felicia Lake lives with Dwayne
25 Barrett, that she's his girlfriend, and that they lived

D3iWdor1

Summation - Ms. Masella

1 together.

2 If we look at the next slide, here's just a photo of
3 the car that was taken by the crime scene detectives when they
4 searched that car after the arrests in this case. That's the
5 same car that Patrick Taylor and Janiel Brown both testified
6 was driven by Dwayne Barrett on a nearly everyday basis during
7 this period. It's the same car that Dwayne Barrett and
8 Jermaine Dore were pulled over in on November 14, 2011, and
9 identified by those police officers as they were following
10 Jesse Singh.

11 If we look at the next slide, this is just a still
12 shot from a video, but this is the same corner in Mount Vernon,
13 that corner at South Fourth Street and South Fourth Avenue on
14 December 12, right around 11:00. If you look in the upper
15 right-hand corner, you see two people, a shorter one and a
16 taller one, walking down the street, sort of pretending not to
17 be together here. Walking down the street, a shorter
18 individual, it's Jermaine Dore. And the taller one is Biggs,
19 his coconspirator in this robbery-homicide.

20 Let's look at the next slide and see what Dwayne
21 Barrett's doing at this time. Sorry. So this is the same
22 corner, South Fourth Street, South Fourth Avenue, and this is a
23 still shot from the video when Zhao Liang and Jamal Abdulla are
24 forced out of the minivan at gunpoint by Dore and Biggs.

25 If we look at the next slide, what is Barrett doing

D3iWdor1

Summation - Ms. Masella

1 during this same time period? This is, remember, 8414, same
2 number used by Barrett throughout the case. This is the corner
3 near South Fourth Avenue and South Fourth Street in Mount
4 Vernon, 267 South Fourth Avenue, the address of Jamal Abdulla's
5 store, where the car jacking takes place. And there's Dwayne
6 Barrett's cell phone using a tower a quarter-block away from
7 that location for an extended period of time, approximately 20
8 minutes, 10:38 to 10:57. That's the 20 minutes during which
9 Dwayne Barrett's in the area inside his Mercedes that we just
10 saw in the previous video, waiting for the victim, Gamar
11 Dafalla, to complete the cigarette transaction, waiting for
12 them to get the cash so that they can rob him.

13 Where is Dore in this time period? Exactly the same
14 place. Here is that same location, 267 South Fourth Avenue in
15 Mount Vernon, and remember this is the 5031 number used by Dore
16 and identified by Janiel Brown, and there's his phone using a
17 cell tower a block away from that scene, 10:57 a.m., exactly
18 the same time as Dwayne Barrett.

19 If we look at the next slide, we can also put Biggs,
20 the third coconspirator that day, exactly in the same area.
21 This is a call that lasts from 10:37 to 10:45, and if you look
22 at this cell site information, it looks like he's actually
23 traveling from the Bronx to the Mount Vernon area. The
24 beginning of the call starts out here and the end of the call
25 ends up here, about a block away from that address at 267 South

D3iWdor1

Summation - Ms. Masella

1 Fourth Avenue. So by 10:45, ladies and gentlemen, all three
2 coconspirators that day, Dore, Barrett, and Biggs, are right in
3 the area of South Fourth Avenue in Mount Vernon where the car
4 jacking and robbery is about to take place.

5 If we look at the next slide, this is the next fixed
6 point in time that we have, ladies and gentlemen. This is
7 Strang and Duryea avenues in the Bronx. This is the Toyota
8 Sienna minivan where Gamar Dafalla's body is found while it's
9 still running on this corner. If you look at this corner in
10 particular, what do you notice about it? There appears to be
11 little traffic in a quiet neighborhood. There aren't many
12 windows or businesses facing this street, and it's an area
13 within the 47th Precinct in the Bronx, which is an area we
14 heard so much testimony about in this case. That's the same
15 precinct where Fahd Hussain's store is located, where the
16 robbers hung out nearly every day. That's the same precinct
17 where many of the robberies occurred. And it's the same
18 precinct that is so familiar to Barrett and Dore where they
19 spent much of their time. So it looks like they chose to dump
20 the body in this minivan on a quiet corner in an area in the
21 47th Precinct that was very familiar to them.

22 If you look at the next slide, this is also telling
23 evidence of Dore's participation in this crime. He returns to
24 the scene. This is the same phone number, 5031, at 12:47,
25 which is about one hour after the body is discovered. This is

D3iWdor1

Summation - Ms. Masella

1 Strang and Duryea Avenue in the Bronx, and this is Dore's cell
2 phone using a tower about a block or block and a half away.
3 Now, we don't know why exactly he returned to the scene. We
4 don't know if he returned to see if the police had found the
5 body, if he thought he left something behind, or to check on
6 the status of the investigation, but it doesn't really matter
7 why. The fact that he returns to the scene where he dumped the
8 body in a van less than an hour later is further proof of his
9 participation in this murder.

10 If you review the cell site evidence for all of the
11 coconspirators that day, it's extremely powerful. It places
12 Jermaine Dore at all three locations: At the Riverroad Motor
13 Inn, when the victim's leaving; in Mount Vernon on South Fourth
14 Avenue when the victim's on South Fourth Avenue; and, finally,
15 at Strang and Duryea avenues about an hour after the body's
16 recovered. And it places Dwayne Barrett at two of those
17 locations, at the Riverroad Motor Inn, when the victim is at
18 the inn, and South Fourth Avenue when the victim is there.
19 This is devastating proof of these defendants' participation in
20 that crime that morning, the robbery and murder of Gamar
21 Dafalla. But that's not all, ladies and gentlemen.

22 Let's talk about the gun that was used that day for a
23 minute. If we look at the next slide, you have heard a lot of
24 descriptions about this gun in this case. These are two that I
25 want you to focus on. The one on the left was Zhao Liang, the

D3iWdor1

Summation - Ms. Masella

1 taxi driver of the minivan that morning:

2 "Q. This gun was not a revolver?

3 "A. No.

4 "Q. Can you tell us what color or colors the gun was?

5 "A. So the gun itself is black and the handle is the color of
6 the wood."

7 Jamal Abdulla:

8 "Q. An automatic gun?

9 "A. Yes, and it has the color of this as the handle.

10 "Q. Was the whole gun that color or just the handle?

11 "A. Just the handle. The rest is black.

12 "Q. And again, just for the record, when you were describing
13 the gun and that that person was holding you were pointing to
14 the wood in front of you indicating the bench that you're
15 sitting at, is that correct?

16 "A. Yes, like that color."

17 Both of the surviving victims the day talk about the
18 same gun, a black gun with wood-colored handle, which is an
19 automatic gun, not a revolver, and the reason that that's
20 important, if we look at the next slide, is that other
21 witnesses talk about this gun as well, other witnesses who were
22 even more familiar with this gun, who had seen Jermaine Dore
23 carry this gun on different occasions.

24 Janiel Brown:

25 "Q. How many times have you seen Dore with the gun?

D3iWdor1

Summation - Ms. Masella

1 "A. Maybe two or three times.

2 "Q. Was it always the same gun?

3 "A. Yes.

4 "Q. Can you describe it?

5 "A. It has two types of material, so it's brownish, which
6 would be like wooden, and then it's grayish, silverish.

7 "Q. Do you know whether it had a barrel?

8 "A. It didn't.

9 "Q. Do you know whether it had a clip?

10 "A. It did."

11 Patrick Taylor.

12 "Q. Starting with the nine millimeter Smith & Wesson, who did
13 you see with that gun?

14 "A. Blags," which, if you remember, is his name for Jermaine
15 Dore.

16 "Q. When did you see that?

17 "A. Like around October 29, 2011.

18 "Q. Where did you see him with that gun?

19 "A. Inside Tall Man's car," which, remember, is the name for
20 Barrett.

21 "Q. What did the gun look like?

22 "A. It is a black gun, but the handle is brown like this brown
23 right here.

24 "Q. When you say brown handles indicating them --

25 "A. Wood.

D3iWdor1

Summation - Ms. Masella

1 "Q. The bench in front of you, you are describing wood?

2 "A. Wood handle, yeah."

3 Ladies and gentlemen, the description of the gun used
4 in the robbery and homicide of Gamar Dafalla as described by
5 the two surviving victims at the scene, Jamal Abdulla and Zhao
6 Liang, is another piece of evidence that provides a strong link
7 between Dore and Barrett in this crime. The two victims both
8 describe the black semiautomatic gun with a wood handle, and
9 that's the same gun Patrick Taylor and Janiel Brown have seen
10 Dore with a number of times.

11 We also know the nine millimeter gun which Patrick
12 Taylor says this gun is was, in fact, used in the murder, and
13 there's further evidence related to the gun used that is
14 important to the evidence in this case. Remember, Government
15 Exhibit 267 is a shell casing that was recovered from
16 underneath Gamar Dafalla's body inside of that minivan that day
17 and the nine millimeter bullet, the bullet recovered from the
18 body, which Dr. Smiddy from the medical examiner's office
19 testified is a medium caliber bullet, which is consistent with
20 being a nine millimeter gun, if you look at the ballistics
21 evidence, there's even further proof linking this gun to
22 Jermaine Dore and Dwayne Barrett.

23 Now, remember, we heard the ballistics evidence
24 through Detective Fox. And what you're looking at here, on the
25 left-hand side of this, is a shell casing, photo of a shell

D3iWdor1

Summation - Ms. Masella

1 casing recovered from a December 5, 2011, robbery on Monticello
2 Avenue in the Bronx. The right-hand side of these photos is a
3 shell casing recovered from a scene of a homicide in Mount
4 Vernon.

5 Now, Detective Fox testified that he matched these two
6 shell casings together. He testified that in his opinion both
7 of these shell casings were fired from the same weapon. In
8 fact, Detective Fox testified that this was a self-initiated
9 match, meaning that when he was reviewing the December 12,
10 2011, shell casing, he recalled that he had seen, several days
11 earlier, another shell casing which markings on the shell
12 casing reminded him of this one. So what did he do? He pulled
13 out that other shell casing from evidence in the firearms lab
14 and compared the two, and, based on this comparison and
15 particular individual markings on these shell casings, in his
16 opinion, he found that they were both fired from the same gun.

17 Now, that other robbery was only approximately a week
18 earlier. It was also in the 47th Precinct, which, remember, is
19 the same stomping grounds for Dore and Barrett we have heard so
20 much about in this case. But there's further evidence linking
21 Jermaine Dore to that incident.

22 Remember, the victim of that crime, if you look at the
23 next slide, was Fitzroy Cornwall. He was the gentleman who had
24 been working at the hospital in White Plains. He was on his
25 way home. He stopped at a bar on the way home to his house on

D3iWdor1

Summation - Ms. Masella

1 Monticello Avenue when he was robbed in the late evening hours.
2 Now, the police responded to that robbery around two a.m., but
3 the robbery itself had occurred 15 or 20 minutes earlier, and
4 remember what Fitzroy Cornwall said about that robbery. He was
5 approached from behind. He was pushed to the ground. The
6 robbers took his personal items like his wallet, his chain,
7 things like that, and that they fired a bunch of shots into the
8 air. When the police returned to the scene, they found seven
9 shell casings right in the area where Mr. Cornwall was robbed.
10 If you look at this slide, ladies and gentlemen, remember, this
11 is 5031, the cell phone number used by Jermaine Dore, December
12 5, 2011, at 1:14 a.m., which is a short time before the robbery
13 of Fitzroy Cornwall, and if you look, this is the location,
14 Monticello Avenue between Bussing and Edenwald, which is the
15 location of the robbery, and there's Jermaine Dore's phone
16 using a cell tower a couple of blocks away at 1:15 in the
17 morning, 1:14 in the morning. From this evidence you can tell
18 that Jermaine Dore was present at the Fitzroy Cornwall robbery,
19 that he committed that robbery using the same gun that he used
20 only a week later in the robbery and murder of Gamar Dafalla.

21 Now, I want to turn now to look at the period of time
22 on December 12 to see what happens inside that Sienna minivan
23 after it leaves South Fourth Avenue in Mount Vernon and before
24 it ends up on Duryea and Strang Avenue with Gamar Dafalla's
25 body in it. In order to do this, we have to look at the phone

D3iWdor1

Summation - Ms. Masella

1 records and Janiel Brown's and Patrick Taylor's testimony.
2 Now, remember that it's right around 11:00 that the minivan
3 speeds off with Dore, Biggs, and Gamar Dafalla inside.
4 Barrett, remember, is the driver that day. He's still inside
5 his Mercedes waiting in the area. And you can tell that from
6 the videos we saw before, that there are times when Dore and
7 Biggs get out of the Mercedes and go back to the Mercedes
8 before the robbery is actually committed. But this is the last
9 phone call on Jermaine Dore's phone records before the robbery
10 and murder, 10:57. And who is he calling? Dwayne Barrett.
11 He's calling Dwayne Barrett to tell him what's going on. This
12 is the point at which they see the minivan and Dore and Biggs
13 approach the minivan and carry out the robbery.

14 Now, after that, there's a blackout period on the
15 phone records. These two calls are exactly consecutive on the
16 phone records. In between 10:57 and 11:17, Jermaine Dore does
17 not make a single phone call. There is a blackout period. No
18 calls to anyone. If you look on the phone records earlier that
19 day, there are a lot of phone calls back and forth to Barrett
20 and Biggs, the other perpetrators in this crime. During this
21 time, 20 minutes, no calls to anyone. This is the time, ladies
22 and gentlemen, when Dore and Biggs are inside the minivan with
23 Gamar Dafalla. It's the time when they are searching for the
24 money, when they're asking him for the money, when he's already
25 thrown the money out the window, which they don't know, and the

D3iWdor1

Summation - Ms. Masella

1 time when Dore gets mad. He gets upset that people are messing
2 up and he shoots and kills Gamar Dafalla. It's also the same
3 time period when they're driving to Strang and Duryea Avenue to
4 leave the minivan on that corner with Dafalla's body inside.

5 Who is Dore's first phone call to after this period?
6 Who does he call? He calls Dwayne Barrett. And why is that?
7 He and Biggs, remember, are together with the victim. Barrett
8 is still in his Mercedes, last seen in Mount Vernon. The first
9 call that Jermaine Dore makes is to Dwayne Barrett, the other
10 perpetrator to this crime. He has to tell Barrett what
11 happened after they left Mount Vernon, and this is consistent
12 with Janiel Brown's testimony as well as Patrick Taylor's
13 testimony, which I'll review with you now.

14 Now, remember Janiel Brown testified that she received
15 certain calls from Dwayne Barrett in the early afternoon hours
16 of December 12, which, at first, she wasn't able to answer
17 because she was in class taking a final examination. But then
18 she did talk to him, and, if you look on this slide, December
19 12, at approximately 1:43, she talks to him for -- the duration
20 indication is in seconds, so 532 seconds -- almost nine
21 minutes. And she testified here in this court about that
22 conversation. She testified that he was very, very upset
23 during that conversation, that she'd never heard him sound like
24 that before, that she was concerned about him, that she was
25 worried about what happened, although she didn't find out at

D3iWdor1

Summation - Ms. Masella

1 that time what had happened that day.

2 There's another call here a short time later that's
3 also several minutes long.

4 If we look at the next slide, we can tell that she was
5 upset and it corroborates her testimony because she sends a
6 text message. Remember the times on this exhibit are Greenwich
7 Mean Time, which is five hours ahead, so the first line, 1711,
8 is really 2:11. So it's right after those two phone calls she
9 just had with Jermaine Dore during which he was so upset like
10 she's never heard him before. And what does she say?

11 "I was only asking about it now so that way when you
12 went to sleep it off, you wouldn't have to bring it up or talk
13 about it again when you sleep it off. Like I always say, be
14 careful because I don't want to lose you to this mess, and, as
15 much as you act tough, you really are troubled when things like
16 that happen."

17 This is direct testimony for her testimony here in
18 court. This text message sent at the time demonstrates that
19 she had already talked to Dore shortly after the murder and
20 she'd already heard him sound more upset than she's ever heard
21 him sound about any of these other incidents. When Janiel
22 Brown gets home that night they do talk about it and she finds
23 out exactly what happened. In fact, Dore confesses to the
24 murder. When she gets home, she finds Jermaine Dore watching
25 the news and she recalls there's an item on the news about a

D3iWdor1

Summation - Ms. Masella

1 robbery and murder that occurred in Mount Vernon. She also
2 tells you Dore was on the phone with someone else, she doesn't
3 know who, but he's on the phone saying, It's on the news, it's
4 on the news right now. He's referring to the robbery and
5 murder he had carried out earlier that day. And they have a
6 conversation after that.

7 When he gets off the phone, Janiel Brown presses and
8 presses to find out what happened earlier that day in Mount
9 Vernon, and, finally, she asked him if what he had done
10 resulted in a duppee, and she told us that a duppee means when
11 someone is shot and killed, and Dore says yes. He admits it to
12 her. He confesses to the robbery and murder of Gamar Dafalla.
13 He says yes, and he further explains a little bit, complaining
14 that other people that day messed up and other people weren't
15 doing their jobs.

16 Now, this is corroborated further by Patrick Taylor's
17 testimony to you here. Remember, Patrick Taylor was not
18 present that day. He was home in Connecticut. But he sees the
19 robbery and murder on the news. A few days later, he's back in
20 the Bronx, and he has a conversation at which only three other
21 people are present. So three other people who are the
22 perpetrators to the murder, Dore, Barrett, and Biggs. During
23 that conversation, it's clear to Taylor that Barrett and Biggs
24 are blaming Dore for what happened that day. They keep saying
25 that he's crazy and that they're not going to mess with him

D3iWdor1

Summation - Ms. Masella

1 anymore. They're upset about what happened that day and
2 they're worried about getting caught.

3 Barrett also says to Patrick Taylor that he's not
4 going to use his car anymore to do robberies, and we know why
5 that is, ladies and gentlemen. At this point, several days
6 after the murder, Barrett and Biggs are stressed out about the
7 consequences of what happened. They're worried about the
8 police coming after them. They know that the police may
9 already be on to them or have some indication that Barrett's
10 car was at the murder scene.

11 These are further admissions from the other two
12 perpetrators that day, Barrett and Biggs, that they were there
13 and that they participated in the robbery and murder of Gamar
14 Dafalla. These admissions make clear that Barrett and Biggs
15 were present that day and they're worried about the
16 consequences of what might happen after that. But there's even
17 further testimony that helps us understand what happened that
18 day, the day of the murder, and that testimony was about the
19 destruction of evidence in this case. There was no murder
20 weapon found and there were no DNA or fingerprints found in
21 Barrett's Mercedes of any relevance linking anybody to this
22 crime when it was searched by law enforcement officers.

23 But you have a clear explanation for those things, and
24 that's Janiel Brown's testimony. She told you that several
25 days after the murder, Barrett and Dore were wiping down the

D3iWdor1

Summation - Ms. Masella

1 Mercedes. She told you that they wore latex gloves and used
2 rags and a cleaning solution to wipe down all of the surfaces
3 in the car, including the handles and other places where you
4 might expect to find fingerprints or DNA, and that was shortly
5 after the murder. Remember, by this time, they already have
6 some idea that the police are looking for that car, and she
7 also told you about the destruction of the gun. She told you
8 that a few days after the murder, Dore gets arrested and she's
9 nervous and suspicious about that because it doesn't seem like
10 he's really doing anything wrong at the time, so she's
11 wondering if it might not have something to do with the murder.
12 So she gets nervous. And who does she call?

13 She calls Dwayne Barrett. Dwayne Barrett's not a
14 friend of hers. This is not some person she had personal
15 dealings with. She calls Dore's business associate, his
16 partner in crime, and the other person who was involved in the
17 murder that day. What does Barrett do in response? He comes
18 over to her house. He comes over, right away. He talks to her
19 about Dore's arrest, and then he comes back a few hours later,
20 and together they destroy the murder weapon. Barrett comes
21 back, he takes the gun from Janiel Brown. He and Duffel drive
22 in his car and she drives in her car down the West Side Highway
23 into Manhattan, and Duffel throws the gun into the Hudson
24 River.

25 This is also crucial evidence in this case, ladies and

D3iWdor1

Summation - Ms. Masella

1 gentlemen. The fact that Barrett is so concerned about
2 destroying any potential evidence linking him to the murder is
3 further proof that he's responsible for that crime. Why else
4 would Janiel Brown call Dwayne Barrett and why else would
5 Dwayne Barrett show up at the house to get rid of the gun?
6 It's because he's worried about that gun and he's worried about
7 evidence of that crime coming back to him. Now, although we
8 can't say based on all of this evidence exactly what happened
9 inside the minivan that day, this does not change the fact that
10 both Dore and Barrett are responsible for that crime.

11 Based on the evidence identifying the gun, including
12 the testimony and the ballistics, Dore's confession to Janiel
13 Brown, Barrett's and Biggs' admissions to Patrick Taylor, and
14 Barrett's role in disposing of the murder weapon shortly after
15 the murder, it seems clear that Dore was the shooter that day
16 and Barrett was the driver and Biggs was the other robber who
17 approached the minivan.

18 But, ladies and gentlemen, you don't have to decide
19 who pulled the trigger that day to find that these defendants
20 both committed murder. You don't even need to find that they
21 planned to kill Gamar Dafalla in advance. Judge Sullivan,
22 after these summations, is going to give you careful
23 instructions about the law that go into a lot of detail about
24 other ways, theories of liability that make the defendants
25 guilty of this charge. And this also applies to the other gun

D3iWdor1

Summation - Ms. Masella

1 charges in this case, the ones associated with the October 29
2 robbery and the other gun charges in this case, the December 12
3 robbery. And these theories are called aiding and abetting and
4 Pinkerton liability, and, like I said, I'm not going to go into
5 detail about them now, but I want to point out a few things
6 about the facts and how they apply to these theories in order
7 to help you to think about the case.

8 Now, all of the evidence in this case makes it clear
9 that Dore and Barrett worked closely together constantly during
10 the course of these months, during the course of this robbery
11 conspiracy, and makes it clear that they both had an
12 understanding that weapons, including guns, would be used
13 during these robberies. There's testimony that Dore carried
14 that black gun with the wood handles to several of the robbery
15 incidents, and there's also testimony that Dore possessed that
16 gun inside of Barrett's car for hours at a time while the two
17 conducted surveillance, planned robberies, and thought about
18 how these incidents were going to happen.

19 There's testimony that Barrett also possessed a gun
20 during the robbery on Radcliff Avenue, the October 29 robbery.
21 Remember, the two robbers go into the house, and Kassim Salahi
22 says that both robbers had guns. And then there's the
23 testimony that when Dore was arrested shortly after the murder
24 in this case, Janiel Brown calls Dwayne Barrett and it's
25 Barrett who retrieves the gun which is the murder weapon and

D3iWdor1

Summation - Ms. Masella

1 helps dispose of it by taking it to the Hudson River.

2 Now, all of this evidence taken together shows you
3 that Dore and Barrett worked together as part of a common plan
4 to accomplish these robberies, some of which were carried out
5 at gunpoint. Both had a role with respect to the firearms that
6 were used, and both certainly had to understand that when
7 loaded firearms were used during the course of a violent
8 confrontation, such as a robbery, that it is foreseeable that
9 someone would get shot or shot and killed.

10 So, as you hear the judge's instructions later on
11 these theories of liability, Pinkerton and aiding and abetting,
12 keep these facts in mind, and if you do so, you will find that
13 there are alternative ways that you can find that both
14 defendants are guilty of the murder charge and the firearms
15 charge without necessarily deciding who pulled the trigger that
16 day or carried the gun in each of those crimes.

17 Now, I want to follow up now to see what happens on
18 the rest of the day, December 12, after the murder in Mount
19 Vernon. What does Dore do just after shooting and killing
20 Gamar Dafalla? He's back on another robbery, and this is a
21 text message on the screen in front of you now. It's at 1715,
22 the third line down, but remember that's approximately 2:15
23 when adjusting for the time difference, and he says, "Am cool,
24 on it now again." And then he says to Janiel Brown, "We move
25 now and a food for 60G now."

D3iWdor1

Summation - Ms. Masella

1 Remember, "move" and "food" are the terms he uses to
2 refer to robberies. And she says, "Okay, well be careful with
3 it. Uptown or South Bronx?" And he says uptown. This is the
4 robbery of the victim Mohammad Althomory, which occurred on
5 December 12, late that afternoon. Remember, he is robbed near
6 Esplanade and Hone Avenue in the Bronx. Mohammad is a victim
7 who testified here before you. He said that he works for a
8 company called Bronx distributors, that he had made a delivery
9 to Fahd Hussain's store earlier that day, and that when he was
10 there, he described three individuals hanging out in the front
11 of the store. He couldn't provide a very specific description
12 of them, but he said they were all three black male individuals
13 who all appeared to be reading the newspaper in the front of
14 Hussain's store. His attention was drawn to these individuals
15 because Hussain sort of kept Althomory at the counter for a
16 period of time counting out the money that was owed to
17 Althomory while he continued to look over at these individuals
18 and gesture towards Althomory. This is something he described
19 on the witness stand two or three times, that he was looking at
20 these people who seemed suspicious because they were standing
21 around reading the newspaper and gesturing towards Althomory as
22 he's paying him the money he owes.

23 After he leaves the store, Althomory makes one stop at
24 the grocery store and then he goes to his home, which was on
25 Esplanade Avenue near Hone. When he gets there, he gets out of

D3iWdor1

Summation - Ms. Masella

1 the car and two robbers confront him, one with a gun, one with
2 a knife. He recognized the gun to be a black automatic gun,
3 but he can't say anything more about it and they take his money
4 and the money orders he had with him that day, which is
5 approximately \$10,000 in cash and \$5,000, or so, in money
6 orders.

7 If we look at the next slide, this is cell site
8 evidence placing Dwayne Barrett, number 8414, the same number
9 we've seen, at 4:38, within the area of where Althomory is
10 robbed.

11 Looking at the next slide, this is 5031, that's
12 Jermaine Dore, utilizing two cell towers, which are basically
13 on either side of the robbery location by two or three blocks
14 on each side.

15 If we look at the next slide, these are text messages
16 back to Janiel Brown after the robbery. The last set of
17 messages told her that he was on his way to commit a robbery.
18 These messages confirm it. If you look at the first one,
19 10:00, and remember that's approximately 5:00 p.m., he says:
20 "Yeah, I did a job, get money, yeah, at least 10G." At least
21 \$10,000, and, in fact, that's exactly what he got from Mohammad
22 Althomory, who lost \$10,000 in cash and \$5,000 in money orders.
23 And she says: "Oh, wow. Nice, baby. I'm happy for you." And
24 he replies "yeah, Ali ting." And, remember, Ali is the name
25 Dore and Barrett used for Fahd Hussain. He's telling Brown

D3iWdor1

Summation - Ms. Masella

1 here we did a robbery, \$10,000 and, oh, yeah, it's related to
2 Ali, it's one of the tips he gave, which she knows quite well
3 because that happened all the time. He's talking about the
4 robbery of Mohammad Althomory, which just occurred.

5 If we look at the next slide, I want to walk through
6 another incident you heard about in some detail, which was a
7 robbery in New Rochelle, New York. The victim was an
8 individual named Prashant Goel who testified here before you,
9 and Goel told you that he had a phone card business and that on
10 any given day he drove around on various delivery routes making
11 deliveries of phone cards to bodegas and small stores. He told
12 you that he had been making deliveries to Fahd Hussain's store
13 for several years and that he knows him and that at the time of
14 the robbery Hussain owed him a balance of approximately \$5,000
15 on his account.

16 On the day of the robbery, which was October 11, 2011,
17 Goel stopped by Fahd Hussain's store, the 1M Stationary store,
18 before continuing his delivery route, and he stopped by to
19 collect some of that balance. Hussain told him that he didn't
20 have any money for him, but Goel told Hussain he was then going
21 to do his delivery route in New Rochelle and that he would be
22 back later. So he provides information to Hussain telling him
23 exactly where he's going to go next, New Rochelle. And Goel
24 then, in fact, does go to New Rochelle. He makes three
25 different stops along the way, and, at the third stop in New

D3iWdor1

Summation - Ms. Masella

1 Rochelle, he's sitting in his car when three robbers approach
2 him. One bashes in the passenger's side window of his car with
3 the baseball bat. Another one stabs his front tire with a
4 knife and the third one approaches his side of the car, and
5 they're all rummaging around in his car for money.

6 Now, Goel remembers one important thing about the
7 robbers that day. He remembers that one of the robbers had a
8 bandage on his arm that went all the way from his hand up to
9 his forearm. And this, ladies and gentlemen, is Jermaine Dore.
10 Remember Janiel Brown's testimony about that bandage. So
11 Prashant Goel says:

12 "Q. The medium type person, what did he look like?

13 "A. He had a bandage on his right arm.

14 "Q. What type of bandage?

15 "A. It was like a pale, light pinkish, one of those bandages
16 if you have like, I guess, swollen arm and collect some
17 medicine and wrap around it one of those arm bandages.

18 "Q. So it is a bandage on his arm?

19 "A. It was on his wrist going to his forearm."

20 Janiel Brown testified about Dore having a bandage on
21 his arm also in October, same time period as this robbery. She
22 testified one night he came home in the middle of the night
23 with Biggs, that he had a hole in his hand the size of like a
24 quarter, that it was bleeding profusely and that they were
25 talking about the fact that Biggs had accidentally stabbed

D3iWdor1

Summation - Ms. Masella

1 Jermaine Dore in the course of one of their other robberies.
2 And that night Janiel Brown takes him to the hospital, helps
3 him get medical treatment, and he gets this bandage.

4 Look at her testimony:

5 "Q. Can you describe the bandage?

6 "A. White.

7 "Q. It was a white bandage?

8 "A. Yes.

9 "Q. How much of his hand did it cover?

10 "A. It only left out his four fingers and his, everything else
11 up to the middle of his arm was covered."

12 That's Jermaine Dore, ladies and gentlemen. He's
13 wearing the bandage. He gets the bandage at some point early
14 in October. He's still wearing it on October 11 when Prashant
15 Goel is robbed on October 11.

16 Look at the next slide. There's a cell phone dropped.
17 Remember the New Rochelle police officers testified about the
18 phone that was picked up right outside the shattered glass?
19 The phone dropped is Government Exhibit 604, and this is one of
20 the contents of the phone. This is Biggs' cell phone. That's
21 a photo of Biggs, who was the one of the other coconspirators
22 who carried out the robbery that day with Jermaine Dore. If
23 you look at slide 50, this is a video of the robbery. It
24 happens just the way Prashant Goel says that it did, and you
25 can see the robbers approaching his car. We're going to get to

D3iWdor1

Summation - Ms. Masella

1 it in a moment.

2 (Video recording played)

3 MS. MASELLA: That's the victim's car. These are the
4 robbers. There's the shorter robber, Jermaine Dore, stabbing
5 the tire; the taller robber, Biggs, breaking the window,
6 reaching inside, rummaging for the cash. And that's where
7 Taijay, Biggs, drops his cell phone on that day that's
8 recovered by the police. And during that robbery, Prashant
9 Goel testified that he lost approximately six or \$8,000 in cash
10 and about \$6,000 in phone cards that were with him also.

11 If you look at the next slide, that's further evidence
12 putting Jermaine Dore exactly at the scene of this robbery.
13 Remember, this is in New Rochelle, yet another location not in
14 the Bronx, not close to where many of these other things occur,
15 and this is October 11, at 3:52 p.m., which is the exact date
16 and time that Prashant Goel is robbed in New Rochelle. This
17 triangle indicates 123 Pelham Road, which is the location of
18 that strip mall where Goel was robbed, and there's Jermaine
19 Dore's cell phone using a tower that's literally right on top
20 of that location at the same exact date and time, placing him
21 there as one of the robbers that day.

22 I want to turn now to another incident that you heard
23 a lot of testimony about, and at the time you heard about it
24 from the victim, Djujka Krco, as well as Janiel Brown, and at
25 the time you may not have realized that both of them were

D3iWdor1

Summation - Ms. Masella

1 talking about the same incident. So I want to take some time
2 to go through the testimony and show you how we know that
3 Dwayne Barrett and Jermaine Dore both conducted this robbery as
4 well.

5 If we can look at the next slide, Djujka Krco,
6 remember, testified that she's the owner of a wholesale
7 business in the Bronx. She testified on the day of the
8 robbery, January 7, 2012, which was a Saturday, she worked all
9 day until about 2:00 p.m. She left her business and she did
10 some shopping, grocery shopping and other errands, for
11 approximately two hours in the area of Lydig Avenue and Pelham
12 Parkway from about 2:15 to 3:45. She testified she was driving
13 a silver RAV-4, which is her personal car, and that after she
14 was done with her errands, she went back to her home on East
15 206 Street in the Bronx and that at that point she was
16 assaulted inside of her car by two robbers wearing masks, one
17 holding a knife, and that they tried to push her back into her
18 car and she struggled with them and fought back, and eventually
19 she's able to run away and that that day they took from her a
20 large amount of cash that were business proceeds from her
21 business, as well as other personal items.

22 Janiel Brown also testified about this robbery. She
23 testified that there were times when she helped Jermaine Dore
24 carry out robberies when she was on a vacation from school or
25 during a weekend, and she recalled a robbery where they watched

D3iWdor1

Summation - Ms. Masella

1 a woman victim get into and identify a silver RAV-4 for a
2 couple of hours while she did various shopping activities, that
3 she was shopping near Pelham Parkway, the same area that
4 Ms. Krco testified she was in, from the morning hours to the
5 midday hours and that eventually Dore got out of the car in the
6 same area where she saw Barrett's car, on a one-way street in
7 the Grand Concourse area. And in a moment I'll show you a map
8 that shows you that East 206 Street is a one-way street in the
9 Grand Concourse area and Janiel Brown testified that Barrett,
10 Dore, and Duff conducted this robbery and that Dore was wearing
11 a mask during the robbery.

12 If you look at the next slide, this is another cell
13 site map, 5031, the same phone number used by Dore, January 7,
14 at 2:32 p.m., and this is during the time when Djuka Krco is
15 shopping and doing her errands. And if you look here, this is
16 Lydig Avenue where she testified she was, and this is Jermaine
17 Dore's cell phone using a cell tower right in that area. This
18 is one more indication, ladies and gentlemen, of another time
19 when Dore and Barrett were stalking their victims for hours
20 before actually conducting this robbery.

21 If we look at the next slide, this is Jermaine Dore's
22 phone, 3:37 and 3:45, approximately an hour and a half later,
23 and this is her location. This is her home location, where she
24 parked right in that area, 185 East 206 Street, and here,
25 ladies and gentlemen, is the Grand Concourse, which is where

D3iWdor1

Summation - Ms. Masella

1 Janiel Brown said that they were. She didn't remember the name
2 of the littler street, but she said they were right near the
3 Grand Concourse. And here's Jermaine Dore's cell phone right
4 in that area where the victim is.

5 I want to turn now to another incident which was the
6 robbery of Ayoub Mohammed, which occurred on December 31 of
7 2011, the New Year's Eve robbery. Ayoub Mohammed is the owner
8 of his own business, a business called Al Distributors which
9 sells telephone calling cards and other items such as
10 over-the-counter medicine and batteries to bodegas and other
11 vendors. He has known Fahd Hussain for many years. He said
12 Fahd Hussain has ridden with him in his minivan. He said he
13 keeps his proceeds from his delivery route in the glove
14 compartment of his minivan while he goes about his day making
15 his deliveries, and he said Fahd Hussain has been in his car
16 before when he's kept money in the glove compartment.

17 This robbery is actually several incidents in the
18 sense that Mr. Mohammed told you before he was robbed on
19 December 31, he also had an incident on September 29, during
20 which his car was broken into. He said on that day, September
21 29, 2011, he made a delivery to Fahd Hussain's store. Hussain
22 owed him money at that time, and Mohammed went to the store
23 around four p.m. to collect the money. Hussain told him to
24 come back at about 7:00 p.m. So that gave Hussain three hours,
25 plenty of time for Hussain to call Dore and Barrett and others

D3iWdor1

Summation - Ms. Masella

1 and set up this incident. So he goes back at seven p.m.

2 Mohammed Ayoub Mohammed goes back to Fahd Hussain's
3 store at 7:00 p.m. and collects a payment that Hussain owes
4 him. He's carrying about \$1,900 with him in total that day.
5 He gets back into his minivan. He puts the money in the glove
6 compartment and he goes to run an errand, gets out of his car,
7 comes back 20 minutes later and finds the window of his car
8 broken and the money in the glove compartment gone.

9 On December 31, several months later, Ayoub Mohammed
10 again stopped at Fahd Hussain's store for payment. Hussain
11 owes him money on his account. He actually stops at the store
12 next door first, not 1M Stationary, but 4192 White Plains Road,
13 which is owned by a related owner. And at this point, it seems
14 like Fahd Hussain actually goes out of his way to intercept
15 Ayoub Mohammed and to take over some of that payment, which
16 isn't even his in the first place. Fahd Hussain does, in fact,
17 pay Ayoub Mohammed some money that day and he pays him a couple
18 hundred dollars but all in small bills, and Ayoub Mohammed told
19 you and he remembers waiting at the counter in the 1M
20 Stationary store for 20 or 25 minutes while he counted up \$200
21 in small bills, which seemed suspicious to him. But again,
22 ladies and gentlemen, this is giving Fahd Hussain the
23 opportunity to set up the robbery of Ayoub Mohammed. It's
24 giving him the opportunity to call Dore and Barrett and set it
25 up so that he gets robbed when he leaves the store.

D3iWdor1

Summation - Ms. Masella

1 Mohammed does leave the store and he goes to a parking
2 area in the area of Gun Hill Road and Jerome Avenue. And by
3 the time he gets there, Barrett and Duffel as well as Dore and
4 Patrick Taylor are all there waiting for him, and this is the
5 incident that we've heard about from the testimony of Patrick
6 Taylor and we also saw a part of it on video.

7 (Video recording played)

8 MS. MASELLA: Remember, Patrick Taylor told you that
9 he was with his cousin Duffel that day, they were hanging out,
10 they get a call from Dore and Tall Man telling them to meet
11 them in the area of Gun Hill Road and Jerome Avenue, that
12 something's about to go down, and they do, in fact, go to that
13 area. Patrick Taylor identified this as himself. So they get
14 to this area a few minutes before the victim does, it looks
15 like. And they go into the parking lot to check it out, see
16 what's going on. This is Jermaine Dore. Patrick Taylor
17 identified him walking back away. They walk into the parking
18 lot and walk back out again, and then a few minutes later,
19 there's the victim, Ayoub Mohammed, carrying his bag of cash
20 and phone cards.

21 Jermaine Dore, Patrick Taylor, and in a minute, we'll
22 see Duff sort of trailing behind. Patrick Taylor identified
23 that as Duff. And there they go. They rob the victim and
24 they're running back to their cars. There's Jermaine Dore,
25 Patrick Taylor, and we'll see Duff come last. Remember --

D3iWdor1

Summation - Ms. Masella

1 there he is. Remember, there are two cars there that day.
2 Patrick Taylor said that Barrett was there in his Mercedes and
3 Duff and Patrick Taylor drove in their own car because they
4 were meeting up with them at the scene.

5 Ladies and gentlemen, you have heard a lot of
6 different incidents and a lot of different evidence, and what
7 I've tried to do is to put it together for you so you can see
8 how it all fits together and how all the different pieces make
9 sense when we look at them all together. And in a few moments,
10 the lawyers for Dore and Barrett are going to stand up and they
11 will have an opportunity to make their arguments to you. And I
12 suspect that they may have some arguments about evidence that
13 was not presented here today. I suspect that they may argue
14 that there's no DNA or fingerprint evidence linking Dore or
15 Barrett to any of these crime scenes, and that's true.

16 They may also stand up and argue to you that there are
17 no eyewitnesses present at the scene of the murder of Gamar
18 Dafalla. But I want you to think about the evidence that you
19 did see and hear during the course of this case. I want you to
20 look to see whether they attempt to have any explanation
21 whatsoever for some of the most devastating evidence in this
22 case, whether they can explain, for example, why Youssef
23 Abdulkader's cell phone was in Dore's apartment with Dore's
24 photo on it; why Barrett's Mercedes was captured right at the
25 scene of the Mount Vernon robbery and homicide by George

D3iWdor1

Summation - Ms. Masella

1 Drape's license plate reader just moments before that robbery
2 occurred; why Dwayne Barrett's cell phone uses the cell tower
3 in Matamoras, Pennsylvania, at the time and the date of that
4 robbery, or, for several hours, over four hours, on that snowy
5 day on Radcliff Avenue in the Bronx, which is the same day that
6 the Salahis were robbed outside of their mosque and inside of
7 their home; or why both Dore and Barrett's cell phones follow
8 the victim, Gamar Dafalla, from the Riverroad Motor Inn to
9 Mount Vernon Avenue at exactly the same time that the victim is
10 going to those locations on December 12.

11 Listen carefully to their arguments and see what
12 explanations they give for this and other devastating evidence
13 that you've seen and heard in this case. And when you evaluate
14 those arguments, I'm asking you to use your common sense. Ask
15 yourself whether those explanations make sense.

16 The government began this trial by asking you to use
17 your common sense, and now, as you listen to the arguments and
18 the evidence that's been presented and go back to the jury room
19 to deliberate, I'm again going to ask you to use your common
20 sense. Your common sense is the best tool that you bring with
21 you to this jury box and the best tool that you bring back with
22 you to your deliberations. Use your common sense to tell you
23 whether witnesses are credible, what people's words really
24 mean, what their actions really say, and how things really work
25 in the real world. And I submit that if you do all of that, if

D3iWdor1

Summation - Ms. Masella

1 you use your common sense, you will return the only verdict
2 that is consistent with the evidence in this case, consistent
3 with the truth, and you will find that the defendants are
4 guilty of all the charges in the indictment.

5 Thank you.

6 THE COURT: All right. Thank you, Ms. Masella.

7 Why don't we take a short break. You can use the
8 restroom, maybe have a drink, and then we'll pick up with the
9 defense summations and the government's rebuttal summation
10 after that.

11 (Jury excused)

12 THE COURT: Let's take like ten minutes.

13 MR. ROTH: Judge, just for the record, I would object
14 to the last part of the government's summation as impermissible
15 shifting of the burden when she specifically posed what
16 possible explanations could the defense come up with for
17 various aspects of the evidence.

18 THE COURT: All right. The objection is noted. What
19 are you asking me to do?

20 MR. ROTH: A curative instruction.

21 THE COURT: I'll take a look at it again, but let's be
22 prepared to just start the defense summations when we get back.

23 Who is going first? Ms. Fontier?

24 MS. FONTIER: Yes.

25 MR. ROTH: If she goes for 35 to 45 minutes, did you

D3iWdor1

Summation - Ms. Fontier

1 want me to go? I'll be about the same, about 45 minutes.

2 THE COURT: We've ordered lunch for the jury. I
3 expect it to get here around 12:45, 1:00, or so. I think we'll
4 probably break around then, if we get to a clean breaking
5 point. I won't interrupt in the middle of a summation. I
6 think we should be okay to take a break right around the time
7 lunch gets here. Either that's before yours or just after
8 yours.

9 MR. ROTH: Thank you.

10 (Recess)

11 THE COURT: Have a seat.

12 We now will have the defense summations. As I told
13 you at the beginning of this trial and I think I've reminded
14 you since, the defense, of course, has no burden whatsoever in
15 this case. The burden is on the government. So the defense
16 has no obligation to explain or prove anything. However,
17 they're certainly free to make arguments. I expect they will
18 make arguments about what the evidence showed or did not show.
19 So you should pay careful attention, equal attention, to the
20 defendants during their summations as you showed to Ms. Masella
21 during the government's summation.

22 Ms. Fontier will go first and then we'll hear from
23 Mr. Roth.

24 MS. FONTIER: Thank you, your Honor.

25 Good morning again, ladies and gentlemen. You heard

D3iWdor1

Summation - Ms. Fontier

1 from 13 victims, and there were exactly zero identifications.
2 The last time that I stood before you, I said you're going to
3 see and hear overwhelming evidence that these crimes occurred.
4 And you saw that. We do not dispute that the people that came
5 here are victims, that these robberies occurred. But what you
6 didn't hear proof beyond a reasonable doubt of is that Mr.
7 Dore, Jermaine Dore, is the person that committed these acts.

8 I'm going to focus on many different things while I
9 talk to you here, but the question that you're ultimately going
10 to have to decide when you go back in that room at the end of
11 today and get this case is whether the government has proved
12 beyond a reasonable doubt that Jermaine Dore is correctly
13 identified as the person who committed these crimes. That's
14 really the only question.

15 Now, the government, I'm sure, perhaps on rebuttal,
16 they haven't said it yet, will say of course there were no
17 identifications. They wore masks. They introduced the masks
18 into evidence. But it's not merely the face of a person that
19 you can use to identify them. It is their size, their weight,
20 their height, their skin color. And I'm going to go through
21 these 13 different victims and show you the descriptions that
22 they said, and every time you see Mr. Dore stand up in court,
23 you can look at him. He's six feet tall. Obviously he's
24 dark-skinned, and he's of average build. Those are basic
25 features. And now I'm going to start.

D3iWdor1

Summation - Ms. Fontier

Ms. Brady, if you don't mind, you can turn that on.

I'm going to do these in chronological order. The first is an incident that occurred on August 22, 2011. The witness was Mr. Rauf. The description that he gives of the two people that robbed him were a black man who was five seven or five eight. That's not Mr. Dore. And a chubby man who was five three or five four. That is not Mr. Dore. And in this incident, those two people that robbed him in daylight in a parking lot were not wearing masks, and he told the police that he would be able to identify them. He sat in that chair, looking directly at Mr. Dore, and he did not identify him.

The second incident occurs on 9/21, 2011. The witness, Mr. Muswara, never saw anyone. He couldn't make any identifications.

Similarly, now, Ayoub Mohammed is going to come up three times, but in the 9/29/11 incident that was discussed, his car was broken into, he didn't see anyone. Obviously there's no identification here either.

Mr. Tawfiq, who described an incident that occurred to him on October 5, 2011, gives a description of two people that were involved. The first is a young black, fair-colored, weighing around 160, 170, five nine to five ten, wearing a red hoody. This is, of all the descriptions we're going to talk about, the most precise description that is given by any witness, and it is a precise description of that man right

D3iWdor1

Summation - Ms. Fontier

1 there, Patrick Taylor. That's who is described by Mr. Tawfiq.
2 Patrick Taylor doesn't admit that he was here, doesn't say he
3 took part in this robbery, but he was precisely described by
4 Mr. Tawfiq. That precise description is not Mr. Dore. It's
5 Mr. Taylor. The other guy was some Spanish guy who he also
6 described as white. Either way, not Mr. Dore.

7 Mr. Abdulkader, on 10/10/11, says the two guys were
8 dark-skinned, about five 11, wearing hoodies. Very average
9 description.

10 Mr. Goel, and I'm going to talk about this in a little
11 bit of detail, Mr. Goel is the individual who testified near
12 the end of this trial who was sitting in his car at 123 Pelham
13 Road when this robbery occurred. He described the three men as
14 short, medium -- sorry, tall, medium, and short, with the
15 tallest being five eight or five nine, the next man down being
16 shorter than that, and the next man down even shorter than him.
17 So all of them significantly shorter than Mr. Dore.

18 Also, these men were not wearing masks. He could see
19 their faces, and, most importantly, he testified that he
20 recognized all three of them as men he had seen earlier in that
21 day. He recognized them. He sat in that witness chair and he
22 did not identify Mr. Dore.

23 (Video recording played)

24 MS. FONTIER: Now, this video is in evidence, and the
25 government just played a portion of it and they said that this

D3iWdor1

Summation - Ms. Fontier

1 man here in the lighter pants is Mr. Dore. That's the
2 government's theory. So now Mr. Goel, during this video, is
3 sitting in this car. This person here has his head, with no
4 mask, inside the car that Mr. Goel is sitting in. And Mr. Goel
5 says he recognizes this person, and it is not Mr. Dore.

6 Now, just use your common sense. That's what the
7 government just told you to do, and I agree. If you're sitting
8 in a car and somebody sticks their head in the passenger's side
9 and you saw that person earlier in the morning, wouldn't you be
10 able to sit in that witness stand and see him again if he was
11 sitting at this table? I think common sense dictates that,
12 yes, you would. But Mr. Goel didn't identify Mr. Dore. Why?
13 Because that is not Mr. Dore. It is not Mr. Dore. He would
14 have been identified if that was him.

15 Now, the government, instead of having a person who
16 looked this robber in the face identify him, relies instead on
17 their cell site evidence, saying Mr. Dore's cell phone was in
18 this area, so this has to be him.

19 Now, I'm going to talk about the cell site a bit more
20 in detail. I believe Mr. Roth will talk about it in even more
21 detail and about the problems with it, but one of the things
22 that you should remember, especially for this incident when
23 this person with his head in the car supposedly is identified
24 by his cell phone, is that the Sprint agent said you can be
25 within two miles of a tower and still use that tower. Think

D3iWdor1

Summation - Ms. Fontier

1 about that for one second. The island of Manhattan, at its
2 widest point, is just over two miles wide. Two miles is a
3 really long distance. It doesn't pinpoint your location. It
4 doesn't mean you're sitting at the tower. But we'll go into
5 that in more detail; Mr. Roth especially will do that.

6 To say that this person with his head in the car who
7 can't be identified is definitely proof beyond a reasonable
8 doubt Mr. Dore because his cell phone was somewhere in that
9 area, I don't think that holds up. That's not proof beyond a
10 reasonable doubt.

11 Mr. Salahi, on 10/29/11, the first Mr. Salahi, the
12 person who was in the van, identifies a driver with a knife who
13 is a little bit taller. The other guy had a revolver. Those
14 are the two descriptions. The person inside the house
15 describes somebody who is dark-skinned and six feet tall, and
16 lighter skinned, the second person, and extremely tall, but he
17 also did say that he was only a little bit taller than the six
18 foot tall person, so take that for what it's worth.

19 But what is important about this is that these people
20 were wearing half-fingered gloves. Okay? When you wear
21 half-fingered gloves, the part that sticks out is the tips of
22 your fingers, the part that leaves fingerprints. They don't
23 recover a single fingerprint from this incident, despite the
24 fact that these robbers wearing half-fingered gloves open the
25 door, come inside, go through the house, looking for the money,

D3iWdor1

Summation - Ms. Fontier

1 turning things over, I believe, was the testimony, and then
2 eventually find the money and leave. They're in there for 15
3 minutes, or so, with their fingertips touching everything, and
4 not a single fingerprint.

5 Also, the government went through and described the
6 gun, the supposed gun, as if the descriptions are so matching.
7 But these are revolvers. No one ever says that there was a
8 revolver involved in other offenses. And the government's
9 description of the black gun with the brown handle was not a
10 revolver.

11 The next incident, Fitzroy Cornwall, this is December
12 5, 2011, he describes two men who were both five eight or five
13 nine and wearing hoodies. He saw their size when they were
14 running away and they both had American accents. Also, which
15 will come up about this incident, Mr. Cornwall heard two shots
16 fired and seven shell casings were recovered. I'm no gun
17 expert, but I think we can all agree that if you have two
18 shots, you end up with two shells. And this is the ballistics
19 that Detective Fox says they all came from the same gun.

20 Now, there's two incidents, obviously, on December 12
21 that are in evidence. The first, which I'm going to talk about
22 in a lot of detail coming up, is the morning incident, December
23 12, at about 11 a.m. Mr. Abdulla testified, and he was, if you
24 recall, rather entertaining. He was the person who made a
25 million dollars working as a government agent, several hundred

D3iWdor1

Summation - Ms. Fontier

1 thousand, I believe he said, coming from the ATF. And part of
2 that was recovering guns, buying guns, working as an informant.
3 He recognizes guns, and what he saw on the driver's side of
4 that vehicle was a guy who he described as black, about five
5 feet six inches tall and carrying a .38 automatic. If you
6 recall, the homicide, the person who was killed was killed with
7 a nine millimeter. The other passenger's side was a tall guy.

8 Mr. Liang, similarly, says less than six feet tall and
9 doesn't know what the passenger looked like.

10 Later that afternoon, Mr. Althomory, now, there's a
11 couple things about this. This robbery occurred on December
12 12, 2011, and, according to his testimony, it's at 5:30 p.m,
13 The two robbers, one was taller, skinny and had a knife. The
14 other was five feet five or five six, chubby, and had a gun
15 that he described as not a revolver. The most important thing,
16 now, the government says what are we going to do to explain
17 things. What I think is very important is not just the
18 evidence that you've heard, but it's also the evidence that the
19 government chose to leave out of their presentation. When
20 they're talking about Mr. Althomory, they conveniently ignore
21 this fact. He viewed photo arrays and identified two people.
22 You know, there is one thing you know for certain. The two
23 people Mr. Althomory identified as the people that robbed him
24 were not Mr. Dore or Mr. Barrett. That would be in evidence if
25 that had occurred, but Mr. Althomory recognized people that

D3iWdor1

Summation - Ms. Fontier

1 robbed him from the photo array, and it was not Mr. Dore.

2 December 31, again, this is Ayoub Mohammed. He
3 describes people as African-American, tall, more than six feet,
4 and the other as heavysset, about five seven. Patrick Taylor is
5 seen on the video, and he says he committed this offense. Now,
6 he also says that Blaq was with him, but I'm going to come
7 back to Mr. Taylor and about whether he is credible, whether
8 his testimony is proof beyond a reasonable doubt of anything.

9 I believe I spelled the name incorrectly, but
10 Ms. Krco, I believe is how it's said, the January 7, 2012,
11 incident, she just describes the two men as a little bigger
12 than five six. The government said in their closing that
13 Ms. Krco's testimony is supported by Janiel Brown's, that they
14 corroborate each other. But Janiel Brown, if you recall,
15 received every single page of discovery in this case. She had
16 all of the evidence. Up until January 31 of 2012, she was
17 receiving evidence. She received the witness list in this
18 case.

19 Yes, she testified about this incident. She testified
20 consistently with what she read in the discovery. And how do
21 you know that that is true? There is one fact that she could
22 not learn in discovery that she testified to. She did not know
23 what Ms. Krco looked like. She couldn't learn that from the
24 discovery. So she had to make it up. And you saw Ms. Krco.
25 She was the only female, but she, I guess, is probably of

D3iWdor1

Summation - Ms. Fontier

1 Eastern European descent, a white woman. Janiel Brown
2 described her as dark-skinned, Middle Eastern. It's the one
3 fact she couldn't learn in discovery, the one fact she had to
4 make up because she didn't actually see it. She's making these
5 facts up, and she got it wrong.

6 January 11, again, Ayoub Mohammed. Ayoub Mohammed
7 describes this one individual in his apartment who he describes
8 as skinny, about five ten, wearing a mask that showed his hair.
9 Again, another general description. This is not a match to Mr.
10 Dore.

11 So it's 13 victims over multiple incidents and not a
12 single one identifies him, and it is not for lack of an ability
13 in each of these cases to identify him. At least two witnesses
14 said that they could identify the person. One looked at a
15 photo array and picked people out. They're not Mr. Dore. The
16 other, sitting in the car staring his robber in the face, it's
17 not an identification of Mr. Dore, so it's not for lack of
18 ability. Mr. Dore was not identified because he's not guilty.

19 There are obviously a lot of different charges, a lot
20 of different incidents that you're going to have to examine and
21 you're going to have to make a decision on, and that decision
22 again is whether the government has proved beyond a reasonable
23 doubt that Mr. Dore is actually the person that committed these
24 offenses.

25 There's a few instructions, obviously the Court's

D3iWdor1

Summation - Ms. Fontier

1 instructions are all important, but there's a few obviously you
2 should focus on. One of them relates to the fact that you must
3 consider the evidence against each of the defendants
4 separately. If you find evidence pertains to Mr. Barrett but
5 not to Mr. Dore, you can't just roll it over. You have to
6 separate them out.

7 That goes for the car, the Mercedes-Benz, if the only
8 person who actually puts Mr. Dore in that Mercedes-Benz at any
9 point is Patrick Taylor. The police officers who stopped that
10 car on November 14 took the two men out of the car, processed
11 it, searched the person in the car, so obviously he's in very
12 close contact, and then released them because there wasn't any
13 evidence of any crime, that person took the stand and did not
14 identify Mr. Dore.

15 This also goes for the cell phones. If you see one
16 cell phone somewhere, it doesn't necessarily mean that the
17 other cell phone is there. You have to look at everything and
18 separate it out for who it belongs to and for which incident it
19 belongs to.

20 Now, I submit that there is a lack of evidence for any
21 of these charges, but I want to focus on the December 12, 2011,
22 homicide. You also have to consider each of these charges
23 separately. So even if you find there's evidence of other
24 incidents does not mean you can convict on the December 12
25 incident. You have to look at this on its own. So now

D3iWdor1

Summation - Ms. Fontier

1 focusing on that, as we just saw, Mr. Liang and Mr. Abdulla did
2 not identify Mr. Dore. And Mr. Abdulla, I will say, did seem
3 like he was trying to earn his million-dollar job back by
4 saying they looked about that size. But that's not an
5 identity, it's not an identification. It's not proof beyond a
6 reasonable doubt.

7 In fact, when Mr. Abdulla was not here performing for
8 all of you, he spoke with the government and he described the
9 shorter of the two as about five feet six inches. And now I
10 submit that that's probably accurate, five feet six inches.
11 Mr. Abdulla, for 16 years, worked as a government informant.
12 He knows what to do. He knows how to observe people. He knows
13 facts that are important. He observed someone who was five
14 foot six, and that's what he told the government. So there's
15 again no victim identifications.

16 You probably definitely cannot read this, but this is
17 a stipulation that I read at the very end of the defense case.
18 This is in evidence as Defendants' Exhibit G, and what it says,
19 in very brief, is that we all agree that the government seized
20 the Mercedes-Benz and the government seized the Toyota Sienna,
21 the car in which the body was found, that a forensic search was
22 conducted on both cars, meaning swabs for DNA, lifts for
23 fingerprints, and that Mr. Dore is not a match for any
24 fingerprints or any DNA evidence that were found in either one
25 of these two cars.

D3iWdor1

Summation - Ms. Fontier

1 I want to talk about again the cell site evidence, and
2 I'm not going to go into great detail with the problems with
3 it. I think Mr. Roth will talk about that a little bit more.
4 But the cell site evidence that the government has used,
5 they're essentially plucking one call out of the air and
6 putting it on a map and putting the scene of a robbery on that
7 same map and asking you to follow it, like I said to you in
8 opening, as if it were a road map of these crimes. But if you
9 look at the defense exhibits, now, this is practically
10 impossible to look at, but what this is is right in the center
11 of this mess is a cell tower.

12 The cell tower on this map corresponds to one of the
13 cell towers in a Government Exhibit. So this is on December
14 12, 2011. This is the cell tower that's at 233rd Street in the
15 Bronx, and what was done to create this image was that the
16 person that was looking at these went through the call records
17 that are all in evidence, the Government Exhibits, and took out
18 every single call by any of the phones that are in evidence
19 that used this cell phone tower during the course of this
20 indictment, over that period of time. So from the government's
21 records, and what's in evidence, this was developed, and what
22 it shows you is that the cell tower was constantly in use.
23 Constantly in use. There is absolutely nothing special about
24 the fact that this cell tower was used at or near the time of a
25 robbery. It was constantly being used.

D3iWdor1

Summation - Ms. Fontier

1 Again, the government very carefully selected which
2 calls and which slides to show you and what maps to show you.
3 They created that time line, if you recall, that you just saw
4 of December 12, 2011. There was a hole in that map. There was
5 a gap in their time line. They put up a call at 11:17, at the
6 time when this homicide was actually occurring, but they didn't
7 show you where that was.

8 Oh, sorry. Let me just go through. This is not in
9 dispute either, but what this is is a screen shot of the video
10 that was showed at 11:02. This is Mr. Abdulla running after
11 the van. Shortly after this, he throws the money out here down
12 the block. So at 11:03, Mr. Dafalla is very much alive.

13 Officer Diaz was the next who testified, and he said
14 he arrived on the scene by 11:50. Mount Vernon police were
15 already there. So what you know as facts is sometime between
16 11:03 and 11:50, this homicide occurred. And what the
17 government did not show is what's in evidence as Defendants'
18 Exhibit E, but I'm not positive, slightly hard to see. But
19 what is B? That's up here. It's a cell tower that was used by
20 Mr. Dore at 11:17 a.m. So if you accept the government's cell
21 tower, cell site evidence that you can locate somebody, he's
22 here using this tower, and what point A is, across the block,
23 is his house. That is Mr. Dore's home. That is the phone
24 tower he was using at the time of this homicide.

25 Mr. Dore was at home. He wasn't in a car. He wasn't

D3iWdor1

Summation - Ms. Fontier

1 shooting anyone. He was at home at 11:17 a.m. on 12/12/11.

2 The government gave you a before and an after. I
3 thought there was another slide in there. It apparently did
4 not save. But the government showed you, and I can't bring it
5 up at the moment, but they gave you a 12:47 phone call, and
6 what Ms. Masella said is that this demonstrates that it was Mr.
7 Dore because he went back to the scene of the crime.

8 First of all, who does that? But, second of all, look
9 at that more carefully. Look at that slide. It's Government
10 Exhibit 3008. Detective Magnuson testified about the vectors,
11 the arms, the little arms that are on his maps, and if you look
12 at that slide carefully, the arms of that map are facing south,
13 away from where this robbery actually occurred. So, according
14 to their testimony and according to that slide, at 12:47, an
15 hour and a half after this incident occurs, Mr. Dore is
16 somewhere within two miles south of that point. It's not proof
17 beyond a reasonable doubt certainly that he went back to the
18 scene of the crime.

19 So that's their cell site evidence for this offense.

20 What else do they have besides these cell towers?
21 They have their ballistics. Now, it wasn't very long ago that
22 Detective Fox testified. You can judge him for what he's
23 worth. Detective Fox says he looked at the shell casings; they
24 were all the same. That's basically his testimony, and you
25 heard him on cross-examination when he said essentially all

D3iWdor1

Summation - Ms. Fontier

1 that matters is the parallel lines. On these casings, you
2 should ignore the differences in the circles, you should ignore
3 the diagonal lines, you should ignore the granulation. You
4 should just look at the parallel lines, but he had no
5 explanation for the fact that the lines looked different. One
6 goes up, one goes down. No explanation for that. He said
7 ignore it. He said it's sufficient, but he couldn't even tell
8 you what sufficient is. He had no definition for that. He
9 said I look at it and I know it, it's sufficient.

10 So judge that for what it's worth. But even if you
11 accept his testimony, even if you believe that the shell
12 casings from December 5 were shot from the same gun as the gun
13 on December 12, it doesn't tell you that Mr. Dore had that gun.
14 It's not proof beyond a reasonable doubt of his identification.
15 In fact, if you go back and you look at December 5, the
16 description of the people by Mr. Cornwall that had that gun, he
17 said they were five eight and they had American accents. And
18 Mr. Cornwall, of all people, I think can recognize a Jamaican
19 accent versus an American accent. And while we asked other
20 witnesses about that, at least Mr. Cornwall was Jamaican. So a
21 five eight guy with an American accent is not Mr. Dore.

22 So what does this leave you? If the cell site is not
23 proof beyond a reasonable doubt, as the government would have
24 you believe -- in fact, they call it the foundation of their
25 case -- if it's not that and it's not witnesses and it's not

D3iWdor1

Summation - Ms. Fontier

1 DNA and it's not fingerprints, it's not ballistics, what do you
2 have? Out of all of this, after two weeks of testimony, after
3 40 different witnesses, what you are left with is Patrick
4 Taylor and Janiel Brown. And you have to decide whether
5 Patrick Taylor's testimony and Janiel Brown's testimony is
6 proof beyond a reasonable doubt.

7 Patrick Taylor is someone who lies to the police. He
8 lies to prosecutors. He lied to you. He lies about who he is.
9 He lies about what he's done. He lies about who he says
10 committed these crimes. And again, if you recall, this guy
11 over here, Jaba, is on this board because Patrick Taylor at
12 some point says, Oh, he really did commit one of these
13 offenses. I was lying when I said it was this guy over here,
14 Biggs. It's not. His lies go to the heart of what his
15 testimony is. He's here to testify about who committed
16 offenses. When he says, Oh, that's Jermaine Dore on the video,
17 is that any more reliable than it was Biggs or it was Jaba or
18 it was Duffel? His testimony is not proof beyond a reasonable
19 doubt.

20 Now, the government says think about what they have to
21 lose. Patrick Taylor's facing 17 years to life on his plea,
22 what he actually says he did, what he pled guilty to. And he's
23 not being prosecuted for a second gun, the gun that he used in
24 his marijuana deal. That gun would add 25 more years minimum
25 on top of the 17. And so the government says he doesn't want

D3iWdor1

Summation - Ms. Fontier

1 to face these sentences so he's going to tell the truth.

2 Well, who decides what is the truth? The government.
3 These two prosecutors decide whether he's told the truth. So
4 what he really has a motivation to do is make them happy. He
5 has to testify consistently with their preconceived notion of
6 what the truth is. That is a motivation to make them happy.
7 It is not a motivation to tell the truth. But as far as the
8 homicide is concerned, even if you accept Patrick Taylor's
9 testimony, he doesn't add anything to the homicide. He
10 testified about what he heard on the news and then a week later
11 he has some vague conversation about using the car and making
12 mistakes. That is not a confession. It's not an
13 identification. He didn't observe it, and he didn't hear an
14 actual statement about this. He doesn't have anything. So
15 ultimately when we're talking about this homicide, we're
16 talking about Janiel Brown.

17 Now, there's a few things. I'm going to talk about
18 Janiel Brown in some great detail, but the government has said
19 she's credible and Patrick Taylor is credible because their
20 testimony is corroborated. But what they have explained to you
21 as corroboration is not that. It's bootstrapping. Patrick
22 Taylor says that -- sorry. I just lost my train of thought.

23 The government said in their closing that Patrick
24 Taylor's testimony was corroborated because he testified about
25 information that he says he got from Mr. Dore. But the only

D3iWdor1

Summation - Ms. Fontier

1 way that you know where he got any of this information is by
2 what he says. What we know about Patrick Taylor is that he
3 committed at least one robbery and he knows Fahd Hussain.
4 Other than that, his basis for information is what he says.
5 That is bootstrapping. It's not corroboration.

6 Similarly, Janiel Brown, the text messages, her
7 interpretation of these is not corroboration of her testimony.
8 She talks about jobs and moves and food and says that means
9 that Mr. Dore was committing robberies. But Patrick Taylor
10 talked about jobs and moves in his testimony, and it was in
11 relation to moving drugs, doing a job, a sale of marijuana, a
12 \$60,000 sale of marijuana. But jobs, moves, the only
13 interpretation you have of that is, again, what Janiel Brown
14 says, and what she says something means is not corroboration;
15 it's bootstrapping.

16 Now, Janiel Brown claims that over the course of five
17 to six months, from August through January, she did
18 surveillance with Mr. Dore at least ten times. She said she
19 brought him a gun on more than one occasion, and then she also
20 claims that she destroyed that evidence by taking his gun and
21 throwing it in the river. She's claiming active participation
22 in these robberies. She's claiming destruction of evidence.
23 The government would have you believe that the gun she
24 supposedly destroyed was a murder weapon. And for that, for
25 admitting, saying on this stand that she's a coconspirator, an

D3iWdor1

Summation - Ms. Fontier

1 accomplice to a murder, she's not being prosecuted at all. She
2 has not been arrested. She's not been charged. She's not
3 working off anything. She's not being prosecuted at all. That
4 means she doesn't have to fear a conviction. She doesn't have
5 to fear jail. She doesn't even have to fear probation. She's
6 not getting deported. She's not getting kicked out of school.
7 Nothing is happening to Janiel Brown. When she says from this
8 witness stand that she was an active participant in at least
9 ten different robberies or planning of robberies and a
10 destroyer of a murder weapon, that's her testimony, and this
11 government needs what she says so badly that they will not
12 prosecute her for that. Scot-free, Janiel Brown. If that's
13 not motivation to keep these people happy, I don't know what
14 is.

15 Ms. Brown claims that on December 12, 2011, Mr. Dore
16 confessed to murder, sat down in their living room and
17 confessed to murder. And that's the evidence that you have, at
18 the end of all this, that really identified Mr. Dore as the
19 person who committed this murder, her statement that he
20 confessed. Let's think about this for a moment, what she says.
21 I guess I got ahead of myself for a moment. I'll come back to
22 that.

23 But Ms. Brown, what we know about her is several
24 things. We know that from the moment of Mr. Dore's arrest, she
25 was communicating with me. She got every single page of

D3iWdor1

Summation - Ms. Fontier

1 discovery in this case. She testified for Mr. Dore on a
2 previous occasion, and we know, according to her, that she sat
3 on that witness stand, took an oath, and lied. She said she
4 did that. We also know that she came to me and gave me an
5 alibi for Mr. Dore saying I was with him all day on December
6 12; he couldn't have committed this crime. She brought me bank
7 records to show that she was with him that day.

8 Ms. Brown says, Yeah, yeah, yeah, I talked to you for
9 a year and a half. I was sure he didn't commit this offense.
10 I helped him. I said all those things that now I'm saying are
11 lies, because I didn't want to be alone. That was her sole
12 motivation, she says, for being willing to sit in the witness
13 stand in a prior proceeding, swear to tell the truth, and
14 commit perjury. If she admits to lying for that little, I'm
15 afraid to be alone, do you think the fear of conviction, jail,
16 deportation, is not sufficient motivation for her to tell the
17 government whatever it is they want to hear?

18 Now, Janiel Brown, after going through the discovery,
19 asking me questions about it, discussing these things, knew
20 exactly what it was that they didn't have, and she sat down
21 with them after they came to her and threatened her with
22 arrest, prosecution. She said, oh, he confessed and I got rid
23 of the murder weapon. How convenient that neither of these can
24 be demonstrated by any other evidence.

25 Now, how do you know besides the fact that this is

D3iWdor1

Summation - Ms. Fontier

1 just all too convenient for Ms. Brown that she's not telling
2 the truth? The government says that her testimony is
3 corroborated. I submit to you that her testimony is consistent
4 with the discovery and the evidence that she reviewed. But
5 every time she's faced with something that she has to make up
6 because she doesn't know it from the discovery, it's disputed
7 by something else.

8 I pointed out earlier her description of Ms. Krco.
9 That's one thing. The other is that her testimony, she did not
10 know, she knew that Patrick Taylor was going to testify. She
11 had the witness list. But she did not know exactly what he was
12 going to say, and their testimony is inconsistent and they
13 cannot both be telling the truth.

14 If you recall, Patrick Taylor took the stand and said
15 that starting in September he was with Tall Man, Mr. Dore, and
16 Duffel every single day from six a.m. until six p.m., they did
17 a 12-hour shift of surveillance and over that period they did
18 four robberies. That was his testimony.

19 Janiel Brown says I was with Mr. Dore, Tall Man, and
20 Duffel at least ten times. Every time I had a school holiday
21 and every weekend. But what do you know also occurred? When
22 Ms. Brown was sitting in that seat and she was shown this
23 picture of Patrick Taylor, she could not identify him. She did
24 not know who that was a picture of. Patrick Taylor sat in that
25 seat and never mentioned in his full-time job, 12 hours a day

D3iWdor1

Summation - Ms. Fontier

1 doing surveillance, when he says he was with these two men and
2 Duffel, he never mentioned Ms. Brown. How is it, if Mr. Taylor
3 says he's with them every single day and Ms. Brown says she's
4 with them at least ten times, that their two paths never meet?
5 How is that possible? It's not. Because they're not telling
6 the truth. Her testimony, you know that it is not true because
7 it is contradicted by the other testimony in this case.

8 Now, I want to go to the events of December 12, 2011.
9 You also know that she's not telling the truth because this
10 just plain doesn't make sense. On December 12, 2011, she says
11 she received a call from Mr. Dore and he was upset and then in
12 order to make him feel better she has a conversation with him
13 that evening in which he confesses to a murder. She then goes
14 shopping in Co-op City, goes to the bank that night, hangs out
15 with her boyfriend, who just confessed to murder. Does that
16 make any sense? Would anyone do that? Would you sit in a
17 living room with somebody who says, Oh, yeah, bad day at work,
18 I killed somebody. And then be like, Okay, babe, cool, let's
19 go shopping.

20 No, it did not happen. She's making up this
21 confession. If you take out that confession, the rest of the
22 day makes perfect sense. The text messages make sense. But if
23 you throw in the supposed confession, it doesn't work. No one
24 does that.

25 Now, for a year and a half, she insisted that Mr. Dore

D3iWdor1

Summation - Ms. Fontier

1 was with her, and when she took the stand and she talked about
2 having said that Mr. Dore was with her on December 12, that he
3 did not commit this murder, she says, Oh, I didn't know what
4 time the murder was. But is that consistent with, on December
5 12, hearing a confession from Mr. Dore? If he confessed to her
6 about this murder, what difference in the world would it make
7 what time the murder occurred? This confession did not happen.

8 Janiel Brown lies. She's good at it. She's a smart
9 girl. She's studying forensic psychology. She looked at this
10 evidence. She knew what the government needed, and her
11 self-interest in making sure that they didn't prosecute her,
12 didn't arrest her, when that took over, she had two choices:
13 Tell the truth that the government doesn't want to hear or fill
14 in the holes, and it was an easy choice for Janiel Brown. It
15 was a really easy choice. She said whoop, confession, and, Oh
16 yeah, I threw away the murder weapon. And guess what? For
17 that wonderful new testimony, she's not being prosecuted. She
18 got exactly what she wanted. She had a motivation to fill in
19 the holes in their case, and she knew exactly what those holes
20 were and she did it. But that is not proof beyond a reasonable
21 doubt. This so-called confession did not happen. Mr. Dore did
22 not confess because he did not commit this homicide. He didn't
23 do it. He's not guilty.

24 Janiel Brown, ultimately, this so-called confession is
25 the only evidence that Mr. Dore is the person who committed

D3iWdor1

Summation - Ms. Fontier

1 this homicide, and her testimony is not proof beyond a
2 reasonable doubt. She is a person who does not tell the truth
3 and does what she needs to do to promote her own self-interest.
4 That's who she is. The government has failed to prove that Mr.
5 Dore committed this homicide, just as they have failed to prove
6 that he is the person who committed any of these acts. And
7 when you look at this evidence carefully and you look at it,
8 all of it, not just the single call here and the single call
9 there, when you look at all of it, you will see that the only
10 verdict that is supported by the evidence is a verdict of not
11 guilty. Mr. Dore is not guilty, and I ask you to return that
12 verdict.

13 Thank you.

14 THE COURT: Thank you, Ms. Fontier.

15 MR. ROTH: I certainly will run past one. It's up to
16 you, Judge.

17 THE COURT: Let's see if the lunch is here. Maybe
18 this is a decent spot to stop for lunch. If it's not here, I
19 think we will start the next summation.

20 Let's then move through the summation and have a late
21 lunch perhaps because there's no point in stopping now because
22 it might be a while before the lunch comes.

23 MR. ROTH: Thank you, your Honor.

24 THE COURT: All right. Mr. Roth.

25 MR. ROTH: Please don't hold it against me if I keep

D3iWdor1

Summation - Mr. Roth

1 you from your lunch.

2 THE COURT: Hold it against me.

3 MR. ROTH: First of all, let me thank you at this time
4 for the time you have already spent as jurors. You have been
5 very attentive. And for the additional time that I'm sure you
6 will spend in the course of your deliberations, I thank you on
7 behalf of Mr. Murphy, my partner, and on behalf of Mr. Barrett.

8 I said in the beginning in terms of my opening the
9 same thing Ms. Fontier said, that we never disputed and to this
10 day we don't dispute that there were robberies here. We said
11 that we would dispute in some instances exactly how those
12 robberies happened, and I think we have. I think we would
13 dispute the recall of some of the victims, and I think we have.
14 And I said that at the end of the day, I would establish for
15 you that the government has failed to prove their case against
16 Dwayne Barrett beyond a reasonable doubt.

17 The victim witnesses that you heard come in here
18 deserve a lot of credit. Most of them were largely immigrants
19 who came over here, were hard working, and made a good life for
20 themselves. On the other hand, that fact alone does not give
21 them a free pass when they testify. It doesn't give them a
22 free pass when you assess their credibility on the questions
23 that I posed to them. There were a few moments of levity in
24 this trial, but there's nothing funny about what happened here.
25 A man lost his life, Mr. Gamar Dafalla. And another man's

D3iWdor1

Summation - Mr. Roth

1 life, Mr. Barrett's, is in your hands right now.

2 The government has tried to establish what I'm going
3 to characterize as a circumstantial case, and, as my cocounsel
4 pointed out, they've tried to shore it up with the testimony of
5 two cooperators: Patrick Taylor and Janiel Brown. Those are
6 sort of the pillars, the foundation of their case. And I
7 suggest to you that if you reject either one of their
8 testimonies, their case crumbles.

9 There's something about their case which I think
10 symbolizes the government's case that they've brought against
11 Mr. Barrett, and I'm going to direct your attention to these
12 maps that were found in Mr. Barrett's car. When they first
13 were presented, and you see that they have different locations
14 on them, in Connecticut and Rhode Island, and they have circled
15 spots, circled spots, which, undoubtedly, the government was
16 inviting you to speculate that perhaps they were casing
17 locations or casing victims at these locations, the reality is
18 there's been no testimony about that whatsoever. It's like
19 much of the case that the government has brought against
20 Mr. Barrett. They invite you to speculate.

21 When I go through the evidence now, I want you to
22 remember one thing that the judge told you, and he'll tell you
23 again: Even at this juncture, Mr. Barrett enjoys the
24 presumption of innocence. That presumption of innocence stays
25 with him now and goes right into the jury room when you begin

D3iWdor1

Summation - Mr. Roth

1 your deliberations. When I'm arguing, when I talk, I'm going
2 to talk about the complaining witnesses and their testimony.
3 Am I saying that any of them are venal or evil, the civilian
4 witnesses who were attacked and beaten in some instances? I'm
5 not saying that, but what I'm saying to you, and you can use
6 your common sense, is that it's natural, there's a natural
7 tendency to try to get back at the people who you believe are
8 the ones who were the perpetrators.

9 Remember, when I talk about the various witnesses, the
10 government has brought out 40 witnesses. It is not the
11 quantity of the witnesses. It's the quality of the witnesses
12 that controls. When I cross-examined them, I tried not to take
13 advantage of perhaps my more formal education, but their lack
14 of formal education does not give them a free pass to
15 exaggerate, to shade their testimony, or outright make
16 something up.

17 My colleague talked about Mr. Tawfiq. He was the
18 fellow who was the phone card guy who was robbed in a store, in
19 a parking lot. Now, I'm going to say he was a straight
20 witness, straight complaining witness, straight victim, didn't
21 make anything up. And it's curious to me that the government
22 didn't bring up one aspect of that testimony because I thought
23 they did, and he's the one who fights back on the scene and
24 then ultimately tells you that he saw the two assailants flee
25 in a Mercedes. Now, I'm not going to say that the government

D3iWdor1

Summation - Mr. Roth

1 did a sleight of hand, but there certainly was that inference
2 that that Mercedes was Felicia Lake's Mercedes that Mr. Barrett
3 drives, but I invite you to look at the actual testimony that
4 Mr. Tawfiq gave in respect to that crime. He said two people
5 committed that crime. One guy was standing there, the Spanish
6 person, who to this day the government hasn't told who that is.
7 No testimony about a Spanish person. And the other person who
8 committed the robbery fought with him and then fled in a
9 Mercedes.

10 Now, I would be more concerned and I would say that
11 that's really solid evidence that maybe, maybe links Felicia
12 Lake's Mercedes to this crime, but he didn't give a description
13 other than it was a Mercedes. He didn't say it was a 500
14 series, an S series. He didn't say there were tinted windows.
15 In essence, he described a generic Mercedes. Beyond that, and
16 there's no question that the government, when they presented
17 that evidence, wanted you to believe that Mr. Barrett is the
18 wheel man driving that car, that they jumped out and jumped
19 back into the car.

20 But if you parse that testimony, you'll see something
21 very interesting. He didn't say he saw either of those people
22 get into the back seat of the car or the front passenger's
23 seat. You don't know who was driving that car or that either
24 one of these people wasn't driving that car. And you know what
25 else the government didn't say? And my colleague mentioned it,

D3iWdor1

Summation - Mr. Roth

1 that the description of the other fellow, not the Spanish guy,
2 who was in a red hoody that Patrick Taylor happened to be in,
3 identified himself in the video, remember an important piece of
4 evidence. Mr. Taylor testified, it's a lot of evidence to
5 remember, you're going to have it at your disposal. Mr.
6 Taylor, he owned a Mercedes. He owned a Mercedes. Check the
7 record. He had that Mercedes that his benevolent cousin or
8 uncle gave him. Could it have been him that was driving the
9 car that day? Of course it could have been.

10 Let's discuss Kassim Salah. He's the fellow in the
11 Radcliff basement robbery. And the government is desperate to
12 try to establish that Mr. Barrett, Tall Man, went into the
13 basement and committed the robbery. But it doesn't establish
14 that fact. He conceded that it was only for the first time
15 after a year and a half of talking to the police, talking to
16 the government, that he said from the witness stand that the
17 robber, one of the robbers was six feet 11. I submit to you
18 that he grew that assailant right here while he sat in the
19 courtroom, right in front of you.

20 He admitted, after some cross-examination going back
21 and forth by me. He said, this is my question to him at page
22 663, when I was referring to his interview that he had in
23 January of this year, with the government, before testifying.
24 My question:

25 "Q. Sir, after having the document, 3517A, read to you, the

D3iWdor1

Summation - Mr. Roth

1 interview notes of the interview that you had with the U.S.
2 Attorney in January of this year concerning this incident,
3 isn't it your recollection you now remember saying that the
4 second male was slightly taller, maybe, than the dark-skinned
5 male that you described as five ten?

6 "A. Yes."

7 Is the fact that he said at some point in his
8 testimony, again, for the first time, that he saw that tall man
9 duck, or whatever it is, under his doorway of his basement, is
10 that dispositive? Is that real proof? You know what would be
11 real proof? Real proof would be we had an actual measurement,
12 an actual reference of what the ceiling height was in his
13 basement or his doorway. That would be real proof, a measure.

14 Height is a relative thing, I'll grant you that. He
15 said slightly taller. I'm going to ask Mr. Murphy to stand up
16 and Mr. Barrett to stand up for a moment. I don't know whether
17 you'd call that height difference slight or not. I wouldn't
18 call it slight. You can sit down.

19 You had an opportunity to see, when the lawyers have
20 gone to the side bar and you probably have an idea from
21 watching us a few times, the difference in heights. But I
22 don't think you would call, if you've seen Mr. Murphy when
23 we've seen him standing up here beside Judge Sullivan, who is
24 not quite the stature in terms of physical height as
25 Mr. Barrett, but I don't think you would describe the judge as

D3iWdor1

Summation - Mr. Roth

1 just slightly taller than Mr. Murphy. And you know what's
2 curious about the testimony about that other robber? There's
3 two other people that fit that description of over six feet or
4 slightly higher than five ten. And how do we know that there's
5 two other so-called co conspirators? Because they're on the
6 board, and Patrick Taylor told us. Patrick Taylor told us that
7 Jaba, his buddy, was six one. That's at the transcript, page
8 1132. And he told us Biggs, not surprisingly, because that's
9 the name he had, Biggs, was six three or six four.

10 The fact that he doesn't have an actual recall of the
11 events does not surprise me, and it shouldn't surprise you.
12 The fact that he gave different descriptions of the weapons
13 that were used that day doesn't surprise me. Can you imagine
14 the terror, the sheer terror of people doing a home invasion in
15 your house when you have your children in there to protect?

16 I want to turn to Mr. Abdulla, the CI. We know he
17 knows how to deliver to Federal agencies. He's worked for the
18 ATF before. We know he's made a million dollars, \$6,000 a day
19 in some instances. It's clear he conducts himself in his own
20 fashion. It's clear that he doesn't consider that he beats his
21 wife, has domestic violence and goes to jail for a year, that
22 that's a crime. He's told you that.

23 Beyond learning about his lucrative business as a CI,
24 there's some good what I call takeaways from what he had to
25 say. He's been a professional witness in his capacity as a CI.

D3iWdor1

Summation - Mr. Roth

1 He knows that. He explained to you the difference of making an
2 observation under the calm of a minute, like me standing here
3 talking to you, or the difference when he was confronted with a
4 gun. That's the difference. And notwithstanding that,
5 notwithstanding that, he came in here and he tried to suggest
6 that these were the two men who were involved in the robbery.

7 I suggest to you that, one, even if he wasn't a CI,
8 people from television, anyone who walks in this courtroom and
9 looks at this defense table could know who the defendants are
10 in this case. It's obvious. Anyone who walked into this
11 courtroom could look and see that Mr. Barrett is taller than
12 Mr. Dore. Even the government, even the government doesn't
13 support his notion that Mr. Barrett was the robber on the day
14 of the car jacking. You can look at the video. There's no six
15 foot seven, six foot eight man there. He thought that he could
16 please with his testimony the feds who have been his pay
17 master, and it's absolutely clear that that's the pay day that
18 he wants to go back to.

19 Why do I say that there's a takeaway or there's
20 something to be learned from his testimony? Because he really
21 illustrated the dangers of a possible misidentification that
22 can lead to an injustice.

23 Let me turn to Ms. Brown. I suggest to you it took an
24 amazing amount of brazenness to come into this courtroom, this
25 very courtroom, the first time she did, take that very stand,

D3iWdor1

Summation - Mr. Roth

1 swear on the Bible, and testify falsely and commit perjury.
2 She did so in a bid to gain her freedom. I dare say there's
3 not one of you who could possibly imagine coming into a
4 courtroom, a Federal courthouse, this solemn courtroom, and
5 taking the witness stand and lying before this judge. But she
6 came back and she came back for a command performance. And she
7 lied again. And she lied this time in a bid for her freedom,
8 and Ms. Fontier explained the various things that she was
9 facing, the time in jail, 20 years in jail, perjury,
10 deportation, loss of her jobs. I don't think I'm really going
11 out on a limb too far when I say her ability, it's beyond
12 chutzpa to come in here and swear and lie a second time. I
13 suggest to you she's a sociopath. And she should not be
14 rewarded for her lies, and Mr. Barrett should not be punished
15 for her lies.

16 Now, she came in here, and it wasn't for a lack of her
17 forensic degree that she testified. That lack of degree only
18 emboldened her, I suggest. Mr. Murphy, on cross-examination,
19 at page 395, asked her the question:

20 "Q. Ms. Brown, have you learned how forensic psychologists can
21 be used in both civil and criminal matters to help fill in gaps
22 and build cases for lawyers litigating matters?

23 "A. In an overview, yes.

24 "Q. In an overview? And that's an important, integral part of
25 what forensic psychologists do, from your point of view, is

D3iWdor1

Summation - Mr. Roth

1 that correct?

2 "A. Yes.

3 "Q. And that's what you're studying now, correct?

4 "A. Yes."

5 That was the foundation of her testimony. She studied
6 this school of thought, this body of education, and she used it
7 to her advantage. The first time that she came in and spoke to
8 the feds, she only admitted to being on two surveillances.
9 Shortly thereafter, it grew to ten surveillances.

10 The first time that she said anything about disposing
11 of the so-called murder weapon, her testimony was that she said
12 to the feds that Mr. Barrett came over to her house, took the
13 gun, and that was it. Disappeared. And then she came back and
14 told you this very elaborate tale, which between her forensic
15 mind and her viewing of television perhaps, about this
16 elaborate convoy that it took two cars to drive all the way
17 down the West Side Highway to throw the gun in the river. I
18 suggest to you she knew that that testimony could not be
19 corroborated, could not be challenged in and of itself. Why
20 did Mr. Barrett need her to go down there with him? There's
21 absolutely no reason. In her own testimony, she indicated she
22 never socialized with him.

23 She claimed that she went all the way to Pennsylvania
24 to commit a robbery, and yet she knew not what the purpose of
25 the visit was. You know, we saw nice pictures of the food

D3iWdor1

Summation - Mr. Roth

1 market there. We don't have any receipts that show that she
2 was actually at the food market. We don't have any toll
3 receipts from her visit. We don't have any pictures from the
4 toll bridges which take pictures of the cars as they go by. We
5 have a cell record. We have a cell record from a call there on
6 August 22. If you recall the cells, one of the providers
7 talked about that cell tower is in what we call a rural area
8 and that the coverage in a rural area could be at least ten
9 miles apart.

10 The government introduced another cell slide of a call
11 with the so-called Barrett phone a week before August 22. Now,
12 why did they introduce that? To show that Mr. Barrett was
13 going to the Poconos? They want you to believe that he was
14 casing the joint there, but there is no evidence about that.
15 If you review the phone records, you'll find that there's
16 another telephone call with the phone on November 7, some
17 months afterwards, from the same cell tower, used at 1:55 to
18 4:36 p.m. The government didn't introduce that. It's not a
19 crime to be in Pennsylvania.

20 Ms. Brown talked about wiping down the Mercedes-Benz.
21 She described a very elaborate thing. They had latex gloves
22 and they were using some solvent to wipe it down in the parking
23 lot of the motel, and that's when Mr. Dore got arrested. Now,
24 interestingly, we have absolutely no corroboration of that. We
25 have no testimony that Mr. Dore was arrested. Indeed, when

D3iWdor1

Summation - Mr. Roth

1 they processed it, and you heard the detective who processed
2 the Mercedes, they didn't find anything. Forget not finding
3 any blood or biological material there; they didn't find any
4 evidence that the car had been wiped down with any type of
5 solvents. They have the Luminol light. They have the other
6 lights. CSI doesn't have a monopoly on investigative tools.
7 This is the FBI.

8 She's a manipulator of the truth. She was not the one
9 who was manipulated, and it's important to point out that not
10 only did she have the discovery from Mr. Dore, she had the
11 discovery in respect to Mr. Barrett as well. She was
12 essentially a spy in the camp, as though she was a paralegal in
13 my office. She used that to her advantage in a bid for her
14 freedom.

15 Let's turn to Patrick Taylor. I started out, first
16 question to him, in my very first questions, Are you a hustler
17 and a risk taker, and he laid it out. Flatout denied that he
18 was either. I suggest that you can conclude based on his
19 testimony that he was both. He risked telling the government
20 what they wanted to hear and that they would overlook the lies
21 that he told them in his past and not discover the lies that he
22 told on the witness stand. He did what he had to do to
23 survive. It's interesting. I asked him this question, page
24 1073, on my cross-examination:

25 "Q. Are you telling the jury that you're somebody who always

D3iWdor1

Summation - Mr. Roth

owns up and takes responsibility and never points the finger at other people?"

Mr. Taylor: "I'm not saying that, nobody never, that's impossible for a person to own up to everything that he ever did. He got to point the finger at somebody." And that's exactly what he did in here, in a bid to save himself. He learned very, very quickly that in this courtroom that cooperation like he did is what's called the coin of the realm. That's the way you pay your way out of jail.

He was well prepared for his testimony. He said, when the feds first came knocking on his door, he claimed to say -- he didn't claim. He just flat out said I had no clue why they were looking for Duff, his cousin, who he said he was committing robberies with. And he certainly said he didn't know why they were looking for him. He said that at the time that they came, he Google'd already, with Shea Douglas, in January, months before the feds were knocking on the door, the two of them, when they heard that Mr. Barrett and Mr. Dore were arrested, it's a wonderful age we live in, they Google'd everything about the crime. They Google'd the times, the charges, the incidents of the crime. They knew what was happening. They knew what was up.

In January, and he benefitted, as did Ms. Brown, from the timing of this case and the weaknesses that the government had and why the government needed them. They were both making

D3iWdor1

Summation - Mr. Roth

1 their deal right at the brink of this trial, a month before, a
2 week before Mr. Douglas signed his and Mr. Taylor signed his
3 agreement.

4 Here's my question, at 1127:

5 "Q. You knew when you first started talking to the feds in
6 January of this year that they wanted information about the
7 robberies, is that right?

8 "A. Yes.

9 "Q. They needed your help to help them try to fill in the
10 blank to make their case?

11 "A. Right."

12 And that's what he proceeded to do, and he indicated,
13 he kept on meeting with them, and then, in February, when it
14 came closer, he said, my question to him on 1141:

15 "Q. And this is in the middle of January when this trial was
16 beginning in a couple of weeks, is that right?

17 "A. Yes.

18 "Q. A couple weeks before, and you knew the feds wanted your
19 cooperation; they needed the information you were going to give
20 them. Is that right?

21 "A. Yes.

22 "Q. You were going to try to help them, try to fill in pieces
23 of their case, is that right?

24 "A. Yes.

25 "Q. You knew that, right?

D3iWdor1

Summation - Mr. Roth

1 "A. Yes."

2 There's one thing that I'm not sure is clear to you as
3 members of the jury, and it's in respect to the actual nature
4 and terms of the cooperation agreement. And you have the
5 benefit of this and you can read this, but I'm going to read to
6 you an excerpt of it, and this is 3537D, the fourth page of the
7 agreement. The pertinent paragraph here is:

8 "It is understood should this office," referring to
9 the U.S. Attorney's office, "determine that either the
10 defendant has not provided substantial assistance in
11 investigation or prosecution, or has violated," and then it
12 talks about some other stuff, "will not be entitled to withdraw
13 his plea" and the government will not give him the magic 5K1
14 letter which lets the penalties go from a minimum of 17 to life
15 to zero. And the key words here are "substantial assistance."

16 He doesn't get a pass and go home free if he just
17 talks in general, Hey, I know Mr. Barrett, we used to get high
18 together, I used to sell him pot. He only gets that pass, if
19 in their minds, he provides information which is of substantial
20 assistance to the prosecution. Filling in the blanks. He
21 believed and he still believes, you heard his testimony, that
22 if he gets that 5K, he's only going to be inconvenienced
23 perhaps for a couple of months. He believes that he, and it's
24 true, is eligible to get what's called time served, just the
25 time that he's been in jail, which is only since January of

D3iWdor1

Summation - Mr. Roth

1 this year.

2 Now, why did I spend so much time cross-examining him
3 about his four-year marijuana conspiracy? Because I think it
4 illustrates that he has a certain sophistication and certainly
5 is well wiser than his high school education, which he never
6 got. He managed to sell enough thousands of kilos probably to
7 fill half of this courtroom and not be detected. His first
8 drug arrest, what did he do? It's very simple. Did he own up
9 to it? No. He invented, with the collaboration of his cousin,
10 he gave his cousin's identification. He didn't take
11 responsibility. He cleverly got out of that case.

12 You can't credit his testimony in respect to anything
13 that he said that he heard that Mr. Barrett or other people
14 said about either Mr. Barrett said that he heard that his car
15 was seen, the Mercedes was seen on the homicide scene. Doesn't
16 even mean that he was in it, but that it was seen or anything
17 else about the homicide itself because I asked him, when he
18 hung out at the party house, I asked him directly, were you a
19 close friend of Mr. Barrett's. And he said no, I'm not a close
20 friend of Mr. Barrett's. And the source of the information,
21 the way that these little sessions went, these rap sessions
22 when they were smoking pot in a party, I asked him
23 specifically, and this is group of people you're talking about,
24 you mentioned before, the pictures on the board, you say they
25 used to talk a lot about a lot of different things, is that

D3iWdor1

Summation - Mr. Roth

1 right? Only robberies, that's it."

2 And this is at 1129, my cross of Mr. Taylor:

3 "Q. When they were talking about other robberies, you told us,
4 did you not, sir, say that a lot of people in that group would
5 accuse others in that group of, frankly, bullshitting each
6 other? Is that fair to say?

7 "A. Yes.

8 "Q. That was a constant what we call theme or constant thing
9 that happened, is that right?

10 "A. There was no trust.

11 "Q. No trust whatsoever?

12 "A. Yes.

13 "Q. Is that what we call no honor amongst thieves? Is that
14 right?

15 "A. Yes.

16 "Q. Anybody had to watch their back, is that fair to say?

17 "A. Sometimes, yeah.

18 "Q. So if you told me you weren't a party to, you didn't
19 participate in a certain robbery, I might challenge you, is
20 that right?

21 "A. Yes.

22 "Q. And the reason I would challenge you is because if I
23 thought I might be entitled to a share in the proceeds, is that
24 right?

25 "A. Yes.

D3iWdor1

Summation - Mr. Roth

1 "Q. In turn, you might challenge me, or it goes on and on, is
2 that fair to say?

3 "A. Yes.

4 "Q. So nobody in some instances really knew who was telling
5 the truth about certain robberies, is that right?

6 "A. Yes."

7 That's the kind of information that he is using as a
8 source to come into this courtroom and point the finger at
9 Mr. Barrett in regard to what happened on the day of the car
10 jacking.

11 By the way, it's obvious that other people used the
12 car that Mr. Barrett was using as well, his baby mother's car,
13 Ms. Lake's car. But even Janiel Brown tells you that she was
14 aware that Mr. Barrett was not the exclusive user of that car,
15 and I'll refer to a series of text messages, Government Exhibit
16 73B, between Mr. Dore and Ms. Brown, and this is on 12/12,
17 2011:

18 "Mr. Dore: Yo, I need you to come with me to go meet
19 Tall Man.

20 "Okay. Ryan in here?

21 "Yeah. The gal went to go talk to the cops. 1040.

22 "Yeah. 1040.

23 "She went to them?

24 "Yeah. 1040. So he want me," Mr. Dore speaking, "to
25 meet him. 1040.

D3iWdor1

Summation - Mr. Roth

1 "They call for her to come to them?

2 "He left out. 1040.

3 "Oh. Okay. Explain to me when you get out."

4 Followed by Mr. Dore: "He has the car or her?

5 "He do."

6 It's just simply something to show you that he was not
7 the only one to be driving that car and obviously saw other
8 items in there to indicate -- the baby's seat -- that other
9 people were using that car as well.

10 You know, Mr. Taylor, I suggest, had one moment of
11 honesty when he was on the witness stand in respect to my
12 cross-examination of him when I was talking about the Radcliff,
13 the basement robbery house, and I asked him about when he
14 changed his testimony and he took Biggs out of the house and
15 put Biggs out of the robbery and put Jaba in the robbery, and
16 his testimony was he lied. He said he lied.

17 Here's my question to him on 1131:

18 "Q. Getting back to the Radcliff robbery, the snowy-day
19 robbery, do you recall telling in one of the proffers that
20 Biggs was on the robbery?

21 "A. At first I did, but then I realized I was lying because
22 Biggs wasn't there. I was mixing up Biggs and Jaba, so I
23 recall.

24 "Q. I'm sorry. Can you sit a little bit closer? I can't hear
25 you.

D3iWdor1

Summation - Mr. Roth

1 "A. At first I told them Biggs was there, but then I didn't
2 want to put Biggs somewhere where he wasn't. So then I told
3 him no, he wasn't there.

4 "Q. You said you were lying?

5 "A. Yes."

6 Now, it's true that the judge then asked him some
7 questions and he said, Well, I really wasn't lying; it was
8 mistake. I suggest there could be a possible other reason of
9 why he took Biggs out of the equation, and, if he was there, he
10 knew what was happening. It's not a mistake, it's a flat-out
11 lie. But perhaps the other motivation was Biggs was already
12 arrested for the robbery. He could not get credit, he could
13 not get substantial assistance for just saying Biggs was in the
14 robbery. If he gave them, as he did, Jaba, a new person,
15 that's new information that constitutes substantial assistance.
16 He was filling in the blanks.

17 The only way that you know as jurors with solid proof
18 and can resolve the question of who was in the basement at
19 Radcliff Avenue that day committing that robbery, as my
20 colleague pointed out, is if you had fingerprints because, for
21 sure, with cutoff gloves those people rummaging through there
22 would, for sure, be leaving fingerprints.

23 I want to turn to the robbery concerning Mr. Mohammed.
24 It's one that we have the video of in the garage. It's notable
25 that Mr. Taylor never admits to punching the victim on that

D3iWdor1

Summation - Mr. Roth

1 day. If you recall and you look at the testimony, Mr. Mohammed
2 said two assailants came up to him and pummeled him. They beat
3 him so badly he had to require medical attention. Mr. Taylor,
4 I suggest, omits that fact because he wants to sort of have
5 clean hands that he's only a lookout. He doesn't want to get
6 dirty with the violence. He's also clever enough to know from
7 looking at the video itself that the actual assault, you may
8 see him running up, guys running down, but you don't see the
9 actual assault and robbery that day. And I dare say that if I
10 asked any of you on the jury as to whose testimony you would
11 believe, whose credibility you would support, would it be Mr.
12 Taylor's or the poor guy, Mr. Mohammed, who indicated he was
13 beaten by two people? I don't think I need to ask for a show
14 of hands on that.

15 Remember, the judge is going to tell you, when you get
16 your jury instructions, if you believe that a witness lied
17 about a material fact in their testimony, you can -- you, with
18 the power that you have as jurors and fact finders -- disregard
19 that portion of the testimony or reject the entire testimony.
20 I suggest, based on the lie, the inconsistencies that you heard
21 from both Patrick Taylor and from Janiel Brown, that you are
22 qualified and you should reject both of their testimonies.

23 The car stop of the Mercedes, the whole Singh and
24 Villanueva incident, I'm going to go a little bit further than
25 my colleague did in respect to that car stop. That was what's

D3iWdor1

Summation - Mr. Roth

1 known as a stop and frisk, where they had to fill out very
2 detailed police report forms. There was a spot for contraband,
3 a spot for any suspicious activity. That police report said
4 nothing about that. Didn't say anything about masks, gloves,
5 baseball bats. And beyond that, these are trained observers,
6 these police officers. There's nothing differently than that
7 car stopping that they do every day, in their life, in their
8 professional duties, and they said that the passenger there was
9 around six feet. And as Ms. Fontier pointed out, neither one
10 of these witnesses came in here and said Mr. Dore was the
11 passenger that day.

12 Well, who else told us about that car stop the
13 government wants you to believe as corroborating evidence of
14 that car stop? Mr. Taylor. Mr. Taylor, who is six feet tall,
15 could Mr. Taylor have been the passenger in the car? I suggest
16 he could be and that's the basis of his knowledge for the
17 information that he provided.

18 I just want to go back to a point in terms of the
19 identification between Ms. Brown and the failure to identify
20 Patrick Taylor. If you read the testimony carefully, you will
21 see Ms. Brown say that she's even been over to Squeaky's house
22 and yet she's unable to identify him.

23 Detective Fox is the ballistics guy. I'm not going to
24 go over all the swirls and everything with you again. You
25 heard that. The bottom line is what you can take away from his

D3iWdor1

Summation - Mr. Roth

1 testimony is that ballistics, however experienced he is,
2 ballistics is not a science. It is a subjective opinion that
3 he rendered. It's not DNA and it's not fingerprints.

4 Let's assume for the purposes of this argument that
5 the seven shell casings match the shell casing that was found
6 in the minivan. What does that tell us about the connection
7 between the two robberies? I don't think it really tells us
8 too much. First of all, the so-called car jacking was supposed
9 to involve three people, and the other robbery of Mr. Cornwall
10 was two people. It was a regular, straight-up, looks like a
11 street robbery with absolutely -- there's no way that any
12 member of this jury can tell me or tell yourselves or your
13 fellow jurors what the connection to that Cornwall robbery was
14 to Hussain, the so-called tipster, because there was none. I
15 suggest to you it's a weak link to two crimes. And there's no
16 hard evidence, and that's what the government wants you to do,
17 go down a path, a road of conjecture and speculation.

18 You didn't see the rap video again, but you can look
19 at it in the jury room, your own thoughts about what it is.
20 But, again, it's suggesting, the government is again asking
21 you, inviting speculation, supposition that the guns that are
22 depicted there, the two guns, are real guns. If they were real
23 guns and they could prove it, don't you think that they would
24 have had Detective Fox come in here, look at that video, and
25 say those were real guns? They didn't because they couldn't.

D3iWdor1

Summation - Mr. Roth

1 It's the same thing as the masks and the gloves that were used
2 there, that they were just simply props for a music video.

3 When they came to arrest Mr. Barrett, he consented to
4 a search of the house he was living in with Ms. Lake. He
5 consented because he had nothing to hide, the same reason he
6 uses his same phone and he wasn't switching his phone. They
7 didn't find any objects of the so-called crimes. They didn't
8 find any jewelry. They didn't find any stolen cell phones.
9 They found a whopping \$1,700. It's logical that that could be
10 rent money. If you read Mr. Barrett's text messages to
11 Ms. Felicia Lake, you'll see she's a working woman. There's
12 nothing to suggest ill-gotten gains there. Certainly wasn't
13 living large. They were using a 2003 Mercedes, sharing it,
14 driving the child around, and you can see that they were doing
15 normal chores with the car from their text messages. But
16 certainly in his house, there were no weapons, no baseball
17 bats, no knives, no guns. And when the car was searched, when
18 the car was taken, the Mercedes, all they found was a pair of
19 ordinary gloves, no other evidence that they found.

20 Why didn't we make a big deal about no forensic
21 evidence? And why did we cross-examine the medical examiner
22 about how the unfortunate Mr. Dafalla died? Because in that
23 van, the minivan, it was a bloody scene. You saw the blood.
24 It looked like the perpetrators pushed that body or moved that
25 body around. If, in fact, one of those perpetrators got in the

D3iWdor1

Summation - Mr. Roth

1 so-called getaway car that Mr. Barrett was allegedly driving,
2 it would leave some trace evidence. They processed that
3 Mercedes, they processed the hoody, which in and of itself is
4 not a crime, for sure. They processed shoes in there. They
5 found no forensic evidence whatsoever.

6 In respect to the homicide, is it plausible that
7 somebody other than Mr. Barrett, and that's the only time, the
8 only time that Felicia Lake's Mercedes-Benz was established to
9 be at or about or around the crime scene, and I'm not clear on
10 the whole time line that the government showed in their
11 demonstrative exhibit that you saw this morning, but the plate
12 reader that they're referring to, Government Exhibit 528, it
13 shows on there two times. It shows a local time of 11:54 and a
14 vehicle time of 10:54. There's no explanation for the
15 difference in the hour that appears on the Government Exhibit
16 for the first time when they show that car at that location.
17 Indeed, where they then show the clip of the Mercedes driving,
18 that time starts at, the video starts at 1552, which is
19 approximately three or four hours after the plate reader itself
20 shows the car there. Is there proof Mr. Barrett was the
21 driver? Could it have been somebody else? We've already heard
22 about another so-called Bonnie and Clyde team.

23 Beyond that, Janiel Brown testified, at page 274, that
24 she lent her car to Biggs, Mr. Dore, and to Tall Man, and
25 that's significant because obviously the cars were not just

D3iWdor1

Summation - Mr. Roth

1 used exclusively by one person. And again, there was a very
2 interesting little piece of testimony there, when Ms. Brown was
3 talking about surveillance she was doing, so-called
4 surveillance one time. She said she was following Tall Man's
5 car and the question posed to her was whether or not, she talks
6 about were you in the car at that time and I'm directing your
7 attention to page 314 of the transcript:

8 "Q. Were you in your car at this time?" This is the direct of
9 Ms. Brown by the government.

10 "A. Yes, I was.

11 "Q. Where was Mr. Dore?

12 "A. In Tall Man's car.

13 "Q. Do you know who was driving Tall Man's car?

14 "A. No.

15 "Q. Do you know whether Mr. Dore was driving his car?

16 "A. No."

17 Although you've heard testimony that Mr. Dore doesn't
18 have a license, you've heard that he drives the car
19 notwithstanding. Now, later in that line of questions, the
20 government asks and Ms. Brown volunteers, Well, it's my
21 understanding that Tall Man was driving the car. Her
22 understanding. An understanding is not hard, credible proof to
23 convict a man of murder.

24 Cell coverage, you heard a lot about cell coverage.
25 The one couple of things I want you to be clear about,

D3iWdor1

Summation - Mr. Roth

1 Mr. Magnuson suggested that cell coverage, and he gave a little
2 example of a baseball diamond, that's really an unfair
3 characterization because a baseball diamond, all the bases are
4 90 feet apart, and you know where the pitcher's mound is. And
5 what you don't have in respect of cell site evidence and what
6 you don't have because of a failure of proof by the government
7 is you don't have what we call predictive coverage maps, which
8 are made by the individual cell providers. And why don't you
9 have them? Well, you have the testimony. Because these are
10 big companies, big capitalist companies that make a lot of
11 money, and they use the fancy word proprietary. They don't
12 like to give out that information. So the government didn't
13 bother to subpoena it, because they have the power to subpoena
14 that information. This whole discussion about cell coverage
15 would not have taken up your time if they had done their job
16 because then you would know about the actual coverage there.

17 They didn't do that. So instead we're left with, and
18 the reason we're harping on this, is because the government
19 still wants you to believe that the phone that was used to call
20 hit the closest cell tower. You heard that at the end of the
21 day that in an urban area, such as we're talking about, that
22 this pie-shaped wedge, that the coverage area, the radius could
23 be as much as two miles away. Well, for those of you who
24 remember your high school geometry, that would leave about a
25 four-square-mile area within that wedge of where that caller

D3iWdor1

Summation - Mr. Roth

1 could be. It's not a precise science. They chose not to drive
2 through. The other way that they could have done it, without
3 subpoenaing Magnuson, who was qualified, or the other fellow,
4 is driven through the area, especially the area where the
5 homicide was, with an RF antenna and charted the area. They
6 did not do that.

7 Cell site evidence is not like a wiretap. It's
8 historical data. This whole issue would be put to rest if you
9 were listening to wiretaps of the calls. You would know
10 whether Mr. Barrett was talking with his so-called
11 coconspirators about committing crimes or whether he was
12 talking about social events, whether he was talking about, as
13 you'll see on his text messages, his rap aspirations. You
14 would see if he was talking to Patrick Taylor about getting
15 pot -- he smoked pot a lot, every day -- about getting pot.
16 That's what you would hear instead of this speculation.

17 The judge is going to give you a charge on multiple
18 conspiracies. He's going to say if you find with respect to
19 Mr. Barrett that some of the actions were not part of the
20 conspiracy charged, you can't convict him.

21 I suggest to you, and now I'll talk about whether it
22 be the Cornwall robbery, which absolutely seems to have no
23 connection, there's a Spanish fellow there and we have no
24 information about regular street robberies, but more
25 importantly, the homicide. How is that connected to this

D3iWdor1

Summation - Mr. Roth

1 conspiracy. How is this connected to the hub, Mr. Hussain, the
2 fount of information, the tipster. I suggest it's not. In
3 fact, when you go back to the jury room, I defy you, any one of
4 you, to say who gave that information for that car jacking.

5 I can offer some suggestions. Perhaps it was
6 Mr. Abdulla, the master of manipulation. He knew money was
7 passing hands on the illegal cigarette deal that time. He's
8 the one who actually said, as the van's being pulled away,
9 Throw the money. And where'd the money wind up? Under his
10 bed. Could it have been Mr. B, the Dominican fellow who was in
11 the SUV Infiniti? He knew that the money was coming down. But
12 if that car jacking and robbery and homicide was an independent
13 free-lance job done by the perpetrators, it's not part of the
14 charged conspiracy.

15 The judge is going to give you an example of
16 circumstantial evidence, and I'm not going to repeat the entire
17 example for you now, only to say that it involves two people
18 walking into the courtroom, one with a wet umbrella, one with a
19 wet raincoat. I ask when you consider that example, that even
20 if you assume in that example that the Mercedes Benz is the wet
21 umbrella or the wet raincoat, it's not enough to convict
22 Mr. Barrett. You have to believe that he's the one walking
23 through the courtroom with that wet umbrella and with that wet
24 raincoat.

25 Some of you may have, as you sit here -- you've sat

D3iWdor1

Summation - Mr. Roth

1 here for a long time; I'm going into your lunch hour now. But
2 you may have a gut feeling, I think Mr. Barrett did it, he must
3 have done something. Well, a gut feeling is not enough. It's
4 not a substitute for proof beyond a reasonable doubt, and in a
5 way that's why in England the verdicts are not as the verdict
6 sheet that you'll get, guilty or not guilty. It's proven or
7 not proven.

8 Mr. Barrett didn't take the witness stand. The judge
9 is going to give you another instruction before you deliberate.
10 He's under absolutely no obligation whatsoever to take the
11 witness stand. He didn't take the witness stand because the
12 government did not prove their case beyond a reasonable doubt.
13 The judge will tell you that you can't hold that against him or
14 draw any adverse inference against him. The judge is going to
15 explain to you what reasonable doubt is, the kind of doubt you
16 have to eliminate before you return your verdict.

17 In this courthouse, some people in years past used to
18 use the kind of example of the kind of doubt that would cause
19 you to hesitate in making an important life decision. And
20 people used to use the example of like when you bought a house
21 or got married. But through the course of time, we've seen
22 that people buy houses, they flip houses. They get married, I
23 don't want to say they flip their wives, but the divorce rate
24 is high. So I suggest when you think about what's an important
25 decision and the kind of doubt that you have to eliminate

D3iWdor1

Summation - Mr. Roth

1 before you return the verdict of guilty, you consider something
2 that hopefully never comes to you, a situation where, God
3 forbid, you have a loved one who is on a life support system,
4 and at some point there was a question about the vitality of
5 the person who was on the life support system. And before you
6 made a decision to pull the plug, so to speak, you'd consult
7 probably not just one but two of the most preeminent doctors in
8 the field to find out whether that person had the vitality or
9 the chance of recovery before you made a decision. Now I
10 suggest for a moment that one of those doctors was Patrick
11 Taylor and one of those doctors was Janiel Brown. Is there any
12 question in your mind that you would not rely on their
13 testimony, on their information, to resolve that doubt? I
14 don't think so.

15 I'm going to sit down shortly, and the government -- I
16 see the government is taking notes on my comments -- will have
17 an opportunity to do what we call rebuttal summation. Very
18 capable, very experienced, beyond their years, both assistants.
19 And I ask, when they get up to address you finally, as they
20 must because it's their burden of proof, that you answer any
21 questions that they raise as you think I would if I had the
22 opportunity to respond to their questions as though I were on
23 the jury.

24 You've all been chosen from among many people who said
25 that they could not try this case fairly, on the facts and on

D3iWdor1

Summation - Mr. Roth

1 the evidence. When you deliberate, I'm going to ask that you
2 remember the words of a famous trial lawyer, one who was
3 featured prominently in a film recently, Abraham Lincoln. He
4 said, In a jury room, one is a majority. If you have a
5 reasonable doubt, do not surrender it under the pressure of the
6 moment. Do not surrender it for convenience because you may
7 have travel plans. Hold on to it because each one of you
8 individually and collectively has the ability to save
9 Mr. Barrett from an unjust verdict.

10 After this case is over, the judge will go on and try
11 his next case, I'll go on to my next case, and you'll go back
12 to the affairs of your lives. But Mr. Barrett is going to live
13 with the decision for the rest of his life, and I ask that you
14 render the verdict that's the only verdict that's consistent
15 with the law and the facts, a verdict of not guilty.

16 Thank you.

17 THE COURT: Okay. Thank you, Mr. Roth.

18 You folks must be hungry. I think lunch is probably
19 in the jury room. We'll pick up again probably in about a half
20 an hour, or so. I'm going to give the lawyers and the parties
21 an opportunity to eat. Don't discuss the case. Don't discuss
22 anything yet. The case will be yours soon enough, but not yet.
23 Continue to keep an open mind. Do not discuss the case. Talk
24 about sports or the weather, St. Patrick's Day, but not the
25 evidence or the arguments.

D3iWdor1

Summation - Mr. Roth

1 (Jury excused)

2 THE COURT: Have a seat. I think if you're going to
3 get something to eat, get it from the cafeteria. We'll pick up
4 again in about half an hour. Great. Have a good lunch.

5 (Luncheon recess)

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D3itdor2

AFTERNOON SESSION

(2:10 p.m.)

(Jury not present)

MR. ROTH: Judge, I don't know if the Court received what purports to be a letter response or a motion to quash my subpoena.

THE COURT: Yeah, I mentioned I was going to talk to you about that. My law clerk has it, but the New York City Police Department?

MR. ROTH: Yes.

THE COURT: I guess it's sort of academic at this point.

MR. ROTH: I don't know. Actually one case I had, when I pursued it, it wound up with the jury verdict being set aside. I will look at it again, and then -- in other words, if the material that I subpoenaed actually contains something that is relevant or pertinent to the case or should have been turned over, obviously I would have a potential --

THE COURT: I don't know whether that's true or not. Certainly we rested and already had now summations, or at least some of them, so I don't know that we'll be able to reopen the evidence, obviously.

MR. ROTH: No, obviously.

THE COURT: All right. I'm still waiting for my law clerks, but one issue did come up, I noticed one of the jurors

D3itdor2

1 has provide an Astoria address as to where he's commuting from,
2 from, that's Mr. Mills. During jury selection Mr. Mills
3 indicated that he resided in Westchester, that he lived in
4 Westchester his entire life. So it may about that he's
5 crashing in Astoria with a friend because it's a better
6 commute, which would be fine, I don't think there's anything
7 wrong with that, but I think that we have to at least inquire
8 to see whether or not he is actually residing in Astoria, in
9 which case he obviously can't sit on the jury. We can either
10 do that before or after the government's rebuttal. Anybody
11 have a preference?

12 MS. FONTIER: I have no preference, your Honor.

13 THE COURT: Mr. Roth?

14 MR. ROTH: No preference.

15 MS. MASELLA: It doesn't matter to us.

16 THE COURT: Well, let's see. I think I probably would
17 rather do the rebuttal and then I'll take a short break before
18 I do the charge so people can leave who don't want to stick
19 around for it, and maybe at that point I will ask Mr. Mills to
20 come in before I begin the charge.

21 Let's bring in the jury.

22 (Jury present)

23 THE COURT: I hope lunch was OK. You can't beat the
24 price, right?

25 Anyway, if it didn't go right, if there were problems

D3itdor2

Rebuttal - Ms. Lester

1 with the orders, always let Mr. Halegua know and we'll try to
2 correct.

3 We're now going to resume the summations. As I said
4 before, because the government has the burden of proof, they
5 get an opportunity to give a second summation, what's called a
6 rebuttal summation, which is a little shorter than the others.
7 It's just responding to some of the points that have been made
8 in the defense summations. So doing the government's summation
9 will be Ms. Lester.

10 Ms. Lester, you may proceed.

11 MS. LESTER: Thank you, your Honor.

12 Good afternoon, ladies and gentlemen. Now you heard a
13 lot of points made by the defense attorneys in their summations
14 over a period of more than an hour, and while I have responses
15 to each and every one of those points, I'm not going to take
16 the time to go through everything, I'm going to try to hit the
17 high points and respond to some of the more serious concerns I
18 have after hearing their summations.

19 Before I do, let me remind you as the judge told you,
20 of course the defendants have no burden in this case. They
21 never have a burden. They don't have to present any witnesses.
22 They don't have to make any arguments at all. The burden is
23 always on the government. We welcome that burden. We submit
24 to you in this case we have satisfied that burden. We have
25 proved that the defendants are guilty as charged beyond a

D3itdor2

Rebuttal - Ms. Lester

1 reasonable doubt. And I'm going to now go through a couple of
2 points again to show you why that is.

3 Now the government has presented many different types
4 of evidence in this case. You've heard from victim witnesses,
5 you've heard from the inside witnesses that Ms. Masella talked
6 about. You heard from law enforcement witnesses who responded
7 to some of the scenes of the robbery. Of course, you have seen
8 physical exhibits. You have seen masks, gloves, you saw
9 ballistics evidence, and you saw cell site evidence. There's a
10 mountain of evidence in this case that demonstrates the
11 defendants' guilt.

12 But what did the defense counsel choose to focus on in
13 their summations? They didn't really directly address the
14 evidence in the case. Instead, they talked about distractions,
15 things that you didn't see. What was the thing that they
16 emphasized the most? Victim IDs, the lack of victim IDs.

17 Now ladies and gentlemen, you heard from the victims
18 of these robberies. They told you many of these robberies
19 happened at night, many of them happened in a matter of
20 seconds. These victims feared for their lives while the
21 robberies were taking place. They were approached sometimes
22 from behind by people who had weapons, knives, guns, sometimes
23 a baseball bat. These victims were scared. They thought that
24 their life could be over in an instant. They weren't mentally
25 recording how tall one robber was in relation to the other.

D3itdor2

Rebuttal - Ms. Lester

1 They did the best they could based on what they remember from
2 those events. But you also have to remember that many of these
3 robberies took place a year and a half ago in 2011. The
4 victims did the best they could based on what they recall, but
5 it shouldn't be surprising to you that they can't remember
6 specific details about the robbers.

7 And that's just assuming that some of those victims
8 were actually able to see the robbers' faces. As you heard
9 time and time again, the robbers wore masks, they held hoodies
10 over their heads, they wore gloves, they concealed their
11 identities on purpose so they could avoid detection. That's
12 why the victims were unable to identify them.

13 And we're not relying on the victims. We're not
14 asking you to say: Oh, the victims were able to identify the
15 defendants. If we had done that, the defense counsel would
16 have said it's dark, they couldn't really see, you can't trust
17 the victims. So they want to have it both ways. In this case
18 we're not even asking you to rely on victim identification, we
19 have presented many other pieces of evidence linking these
20 defendants to the crime scenes.

21 Defense counsel also spent a lot of time talking about
22 the two inside witnesses in the case, Patrick Taylor and Janiel
23 Brown. Again, this is not really a surprise, these two
24 witnesses provided devastating, devastating testimony about the
25 robbery conspiracy. Think about what they both said. They

D3itdor2

Rebuttal - Ms. Lester

1 said that between the period of August or September of 2011 and
2 January of 2012, they were with these people, in Ms. Brown's
3 case, every day, or in Mr. Taylor's case, almost every day.

4 And what were Dore and Barrett doing during that period?

5 Committing robberies. That was their full-time job. That's
6 how they made a living. They didn't have legitimate jobs.
7 This was their only source of income during this time period.

8 If you believe these witnesses' testimony, the case is
9 over. That's it. The defendants are guilty as charged. So
10 Ms. Fontier and Mr. Roth know that they have to attack these
11 witnesses. That's the only way that they can gain a foothold
12 with you, the jurors.

13 But does attacking these witnesses help you to focus
14 on what was the actual evidence in the case? No. It doesn't.
15 The questions that they raised during the cross-examination of
16 those witnesses were meant to distract you from the devastating
17 nature of those witnesses' testimony. Think back particularly
18 to the cross-examination of Patrick Taylor by Mr. Roth. How
19 much time did he spend asking Patrick Taylor questions about
20 his marijuana dealing? It was more than half of the
21 cross-examination.

22 And Patrick Taylor answered those questions in a
23 straightforward manner, just as he had answered Ms. Masella's
24 questions on direct. He freely admitted that he sold thousands
25 of kilos of marijuana. He wasn't trying to hide that from you.

D3itdor2

Rebuttal - Ms. Lester

1 He admitted that he told the government about that even though,
2 as far as he knew, the government didn't know anything about
3 it. He didn't think he was under investigation for marijuana
4 dealing. He told you that prior to this case he had only been
5 arrested one time, and that was for possessing a minor amount
6 of marijuana, and he gave a false name on that occasion. But
7 he wasn't exactly living in fear of the law, he told you that.
8 So when he came in and met with the government, he was
9 truthful. He told the government about his prior criminal
10 conduct. He was prepared to answer questions about it, and he
11 did so. There was nothing to hide there.

12 But why did Mr. Roth want to spend so much time on
13 that? Because it has nothing to do with the defendants here.
14 The marijuana business is totally separate. Mr. Taylor told
15 you that he sold marijuana with his cousin, Shea Douglas, from
16 a house where they were both living. He did tell you that on
17 occasion he had sold some marijuana to Dwayne Barrett, but he
18 didn't say that Dwayne Barrett was a marijuana seller himself.
19 He didn't try to rope Barrett or Dore into his vast marijuana
20 conspiracy. He focused on his own criminal conduct and he
21 testified truthfully.

22 Now defense counsel tried to distract you. They want
23 you to think about how bad Taylor and Janiel Brown are, how
24 they committed crimes, how they cut deals with the government
25 and tried to save themselves. You heard time and time again

D3itdor2

Rebuttal - Ms. Lester

1 what did they need to do? They needed to please the
2 government, they needed to fill the gaps in the government's
3 case. Ladies and gentlemen, the reason why defense counsel
4 spent so much time distracting you with these issues rather
5 than focusing on the facts of the case is that the facts are
6 not their friends. If you focus on the facts, you will find
7 the defendants guilty as charged.

8 They're trying to have it both ways with these
9 witnesses. They want to have their cake and eat it, too. And
10 I will explain what I mean by that. Now when Patrick Taylor
11 told you about his misdemeanor business at length under direct
12 examination and then cross-examination, again defense counsel
13 wants you to believe that aspect of his testimony, that was the
14 truth, he sold enough marijuana to fill up half this courtroom,
15 Mr. Roth said. OK, so he was telling the truth about that. So
16 what is he lying about? Everything he said about the
17 defendants? That doesn't make sense, ladies and gentlemen.
18 They embraced his testimony about his prior criminal conduct as
19 the truth, but as soon as he started talking about robberies
20 that he committed with these defendants, all the sudden he's a
21 liar. That doesn't make sense. You should not accept that.

22 What about Janiel Brown? Ms. Fontier tried to paint
23 her as a person that can't be trusted, someone who has lied
24 before and will lie again. But think about her testimony
25 during direct examination. She freely admitted to you that she

D3itdor2

Rebuttal - Ms. Lester

1 had lied previously when she was testifying on Jermaine Dore's
2 behalf. She also told you when she presented information about
3 a supposed alibi to Ms. Fontier, she was lying, she wasn't
4 being truthful.

5 Why did she lie? She told you that, too. Because she
6 was following Jermaine Dore's instructions. He was her
7 boyfriend at the time. That was the entire nature of her
8 relationship with Dore. He told her what to do and she did it.
9 He told her to drive somewhere, and she did it. He asked her
10 to sit in the car while he surveilled robbery victims, and she
11 did it. When he needed her to get rid of the gun that he used
12 to commit a murder, she did it. When he needed her to invent
13 an alibi for him, she tried to do it. And when he needed her
14 to testify at a previous proceeding, she did it. She told you
15 she did it out of love and out of fear.

16 But as she also told you, things changed once she got
17 a lawyer who was representing her own interests and looking out
18 for her. She decided to make a break with her past, accept
19 responsibility for what she had done, and cooperate with the
20 government. She realized that her priority was no longer
21 Jermaine Dore, her priority was the truth.

22 Now what could she be lying about at this point? Why
23 would she need to, quote, save her own skin if she hadn't
24 actually committed any crimes? She must have committed crimes,
25 right, under defense counsel's theory? So if she did, she must

D3itdor2

Rebuttal - Ms. Lester

1 have been committing the those crimes with Jermaine Dore. I
2 don't think anyone would seriously contend -- and defense
3 counsel didn't argue -- that Janiel Brown was out there on her
4 own committing robberies just by herself and Jermaine Dore had
5 nothing to do with it. That's ridiculous.

6 So your common sense tells you that she was committing
7 robberies, and if she was committing robberies, she was doing
8 it with Jermaine Dore. You also know this because their
9 contemporaneous text messages between Jermaine Dore and Janiel
10 Brown that tells thank you exactly what was going on. She
11 admits in those messages that she's helping him commit
12 robberies, and he's writing back to her confirming that's what
13 they're doing. Those text messages are devastating, absolutely
14 devastating. And Ms. Fontier couldn't really touch them.
15 There's not much you can do when a defendant is admitting his
16 own involvement in robberies at the time that those robberies
17 are happening. So you know that Ms. Brown is not lying about
18 Mr. Dore's participation in robberies.

19 But what about the murder? Defense counsel would have
20 you believe that Janiel Brown made up the conversation that she
21 told you about about the murder, the conversation where
22 Mr. Dore told her that what he had done resulted in a duppe,
23 meaning that he shot and killed someone. And so when she
24 presented evidence of that supposed alibi with the bank
25 receipts to Ms. Fontier, she was doing it because she actually

D3itdor2

Rebuttal - Ms. Lester

1 believed that he hadn't committed the murder.

2 Defense wants to you believe that Brown invented this
3 conversation because she knew the government's case, she knew
4 that there was this hole, and she wanted to give the government
5 information in order to save herself from being prosecuted for
6 her own conduct. Now for the reason I just mentioned, that
7 doesn't really make sense, because if you believe Ms. Brown was
8 committing robbery, then you must believe that Jermaine Dore
9 was committing robberies.

10 But with respect to the murder, does it make sense
11 that she would be lying about this conversation? We submit
12 that it doesn't. First of all, if she was lying, wouldn't she
13 have the made the conversation much more detailed? Wouldn't it
14 have been much more explicit? Wouldn't Jermaine Dore have
15 provided details about exactly what happened during the
16 homicide? You heard defense counsel harp on the fact that the
17 government doesn't have anyone who was inside that van who
18 could tell you exactly what happened after the carjacking
19 occurred.

20 Well, if Janiel Brown knew that, and she knew that
21 that was a hole in the government's case, wouldn't she have
22 told us what happened there if she was making up the story?
23 She could have made the lie a lot better if she was lying. She
24 could have described the murder in painstaking detail. But she
25 didn't.

D3itdor2

Rebuttal - Ms. Lester

1 How else do you know she didn't invent that
2 conversation? It's corroborated again by those damning text
3 messages. Ms. Masella went over that excerpt with you.
4 Mr. Dore is confused, upset, worried, concerned. He's texting
5 and calling Ms. Brown asking her for support and help. And she
6 texts him back and says I'm really worried for you, you act
7 like this doesn't bother you, but I know it does.

8 What are they talking about? The murder.

9 Why did defense counsel spend so much time trying to
10 discredit Ms. Brown? It's obvious. Because her testimony,
11 again, is devastating against the defendants. Both Taylor and
12 Brown are witnesses who were with the defendants almost every
13 day who committed crimes with them over a period of months.
14 And again, they didn't try to sugar coat their own criminal
15 conduct, they came right out and told you about it.

16 You may not like them, ladies and gentlemen, but it's
17 not a popularity contest, it's a federal criminal trial. The
18 only question is whether you believe them. Think about their
19 demeanor as they answered questions on the stand. Did they
20 avert their eyes as they were talking? Did they seem evasive?
21 Did they refuse to answer questions about their past? No, they
22 got up on the witness stand, they laid it all out for you, and
23 they didn't hold anything back.

24 You should also think about what their incentives are
25 at this point. They told you about their agreements with the

D3itdor2

Rebuttal - Ms. Lester

1 government. And the agreements themselves are in evidence, and
2 you can look at them yourself during your deliberations. Those
3 agreements obligate Taylor and Brown to testify truthfully
4 about their own conduct and about the conduct of other people.
5 It's only if they do that that Taylor gets a 5K letter for his
6 sentencing and Brown receives the protection of not being
7 prosecuted for the robberies. It's in their interest to tell
8 the truth.

9 Now you listened carefully to their testimony, and now
10 the time has come for you to weigh it against all of the other
11 evidence. Is it corroborated by the other evidence that was
12 presented? As Ms. Masella explained in the main summation, we
13 submit that it is. The text messages, the cell site records,
14 the physical evidence, the testimony of the victims, they all
15 support what Taylor and Brown told you about how these
16 robberies took place, that the defendants here were core
17 members of robbery crew that committed robberies between
18 August 2011 and January 2012, including the December 12 robbery
19 that resulted in a homicide.

20 I want to talk briefly about another piece of evidence
21 that the defense counsel spent a lot of time on, which was the
22 cell site evidence. Now like Mr. Taylor and Ms. Brown's
23 testimony, this is also very devastating evidence for the
24 defendants. There is simply no logical explanation why their
25 cell phones would be at so many incidents over such a long

D3itdor2

Rebuttal - Ms. Lester

1 period of time. It doesn't make sense. Your common sense
2 alone can tell you that.

3 But let me address some of the arguments they made in
4 a little more detail. Ms. Fontier and Mr. Roth both mentioned
5 the two miles of coverage area for a cell tow tower. If you
6 look back at the testimony of the Sprint custodian of records
7 who testified about the coverage area of the cell tower, he did
8 not say that it would usually be two miles as the defense would
9 have you believe. He said in an urban area it can be up to two
10 miles, but it usually is more like a few blocks. And you know
11 this because you saw numerous maps that had cell towers listed
12 out on them, and you could see how close they were. In an
13 urban area like the Bronx or Mount Vernon, cell towers are
14 typically only a number of blocks away.

15 And you heard more than one witness, the Sprint
16 witness, the AT&T witness, and also Agent Magnuson testify
17 about how cellular network providers set up their cell towers
18 so there's overlapping coverage. That means that the towers
19 are designed to have a smaller coverage area so that they
20 overlap with the towers right next to them so that people never
21 drop calls. So it's not logical, and you do not have to accept
22 the argument of the defense that just because a defendant's
23 phone hit on a tower he has to be within that vicinity or he
24 could be up to two miles away. That doesn't make sense, ladies
25 and gentlemen, and you know it.

D3itdor2

Rebuttal - Ms. Lester

1 Based on what you heard from the cell phone witnesses,
2 you know that cell phones usually contact the closest tower
3 because that's usually the one with the strongest signal. They
4 also don't leapfrog over a tower that is closer to one that's
5 further away.

6 The other arguments that the defense made about the
7 cell phone evidence are also a distraction. Let's take a look
8 for a minute -- I'm going to hold it up -- at Defense Exhibit
9 C1. This is one of the maps that Ms. Fontier showed to you
10 during her summation.

11 Now looking at this, at first glance it's incredibly
12 confusing. There's no particular date listed in the heading
13 and there are three separate phone numbers. So you have heard
14 already that the 8414 number belongs to Dwayne Barrett, and you
15 heard that the 3805 number belongs to Jermaine Dore, and this
16 location of the cell tower is at 233rd Street.

17 Well, during the trial, you heard a lot of testimony
18 about what is located at 233rd Street, Ali's store, 1M
19 Stationery is at 233rd Street and White Plains Road. This
20 exhibit, as confusing as it is, is actually in accordance with
21 the government's evidence in this case, that is, that Barrett
22 and Dore hung out at Ali's store day in and day out to get
23 tips, information, about robbery targets that they were
24 following. So it's no surprise that their phone numbers are
25 hitting off a cell tower that's located right there. It

D3itdor2

Rebuttal - Ms. Lester

1 actually makes perfect sense.

2 The larger point on the cell site evidence boils down
3 to this, the defendants would have to be the unluckiest men in
4 the world for their cell phones to hit at the towers where they
5 did. Think about how many exhibits Ms. Masella showed you in
6 the main summation. For nearly every robbery incident, there
7 was a cell phone hit for at least one of the defendants. Most
8 often Barrett was there, and on other occasions Dore was there
9 as well.

10 It's particularly damning when you think about the
11 cell site evidence on the homicide. And defense counsel
12 focused on this as well, as they need to, because, again, it's
13 very damning evidence. On that day, as Ms. Masella showed you,
14 both Dore and Barrett were in the vicinity of the River Road
15 Motor Inn in the Bronx. That's where the victim was, and they
16 were there, too. Their phones were hitting off cell towers in
17 that area.

18 Then when the victim leaves that area, they do, too.
19 They go to 267 South Fourth Avenue right at the intersection,
20 right where that same camera is that showed the robbery
21 actually taking place. What are the odds of that? Ladies and
22 gentlemen, it just doesn't make sense. They were obviously
23 following the victim.

24 Now Mr. Roth said well, OK, we know the car is there.
25 He had to concede that, it came up on the license plate reader.

D3itdor2

Rebuttal - Ms. Lester

1 There's no real way to get around that. But we don't know that
2 Barrett of driving it, he said. Well, ladies and gentlemen,
3 did you really hear any evidence of anyone else driving that
4 car besides Dwayne Barrett? Yes, it's registered in his
5 girlfriend's name, but whenever anyone else testified about
6 what car Barrett drove or who was driving the Mercedes, it was
7 always Barrett. Patrick Taylor told you that he traveled in
8 that Mercedes with Dwayne Barrett. Janiel Brown told you she
9 knew that was Barrett's car. Barrett was pulled over by the
10 police in that car. It was obviously his car. He was there
11 that day.

12 Besides, if he wasn't there, what is Mr. Roth really
13 saying? Felicia Lake was there in Mount Vernon conducting
14 surveillance of the victim? That doesn't make sense, ladies
15 and gentlemen. Use your common sense. The car was there,
16 Dwayne Barrett was there, his phone was there.

17 Now after the robbery and homicide take place,
18 Ms. Masella also showed that you black-out period in Dore's
19 phone records. It's about a 20-, 30-minute span where there
20 are no phone calls. The last phone call that he make before
21 the robbery or right around the time of the robbery is to
22 Barrett, and the next phone call he makes is to Barrett again.

23 And defense counsel in their summation showed you
24 where the tower is that Dore's phone hit off for that call, the
25 11:17 phone call. It's right by Dore's house. He had come

D3itdor2

Rebuttal - Ms. Lester

1 back home. He committed the robbery, the murder, and he came
2 back home where he was calling Barrett, telling him what
3 happened, trying to get in touch with Janiel Brown looking for
4 consolation, concerned and worried about what he had just done.
5 It makes perfect sense that he would go home. He needs a rest
6 period. He just committed a murder. He goes home, calls
7 Barrett, tells him what happens, regroups and goes out again on
8 a job, as Ms. Masella explained to you.

9 We're not talking about a large distance here. And
10 some you may know, but also, as you can see from the cell site
11 maps that are in evidence, Mount Vernon is just over the border
12 of the Bronx. Where the body was discovered at Strang and
13 Duryea Avenue is in the Bronx. Jermaine Dore lives in the
14 Bronx. It's not inconceivable, in fact it makes sense that
15 after dumping the body at Strang and Duryea, he would go back
16 home to regroup.

17 Again, the cell site evidence, it can't really be
18 contested. It's computer-generated information about what a
19 cell phone is doing. You heard the custodial witnesses
20 testify. These records show for sure when a phone makes a
21 call. It really can't be disputed. That's why defense counsel
22 had to go out on a limb in trying to contest it.

23 Now going along with this idea of the lack of evidence
24 in the case, you heard Mr. Roth talk about circumstantial
25 evidence and that this is a circumstantial case. Well, ladies

D3itdor2

Rebuttal - Ms. Lester

1 and gentlemen, as Judge Sullivan will instruct you, there's
2 nothing wrong with circumstantial evidence. You're free to
3 rely on both direct evidence and circumstantial evidence in
4 reaching your verdict. Circumstantial evidence is simply
5 evidence that requires you to draw an inference from one or
6 more facts.

7 So, for example, if you saw a little boy sitting at a
8 kitchen table, and he had chocolate on his face and there was a
9 box of cookies next to him that was empty, now you have no
10 direct evidence that he ate the box of cookies, you didn't see
11 him do it, but you can infer from two pieces of circumstantial
12 evidence, the chocolate on his face, maybe the guilty smile,
13 and the fact that the cookie box is empty that he did eat the
14 cookies. It's a logical inference that can be drawn from those
15 two facts. That's all circumstantial evidence is. You can
16 rely on it.

17 Let me give you another example of circumstantial
18 evidence that actually occurred in this case, and that's from
19 the robbery of Youssef Abdulkader. Now he told you that two
20 men approached him late at night near his house, threatened him
21 with a knife, and took his cell phone and laptop. Separately,
22 you heard from ATF Agent Jose Ruiz and from Janiel Brown that
23 Dore's cell phone was taken on the day that he was arrested.

24 Now we showed both Mr. Abdulkader and Mr. Brown photos
25 from that phone which are in evidence. Remember those

D3itdor2

Rebuttal - Ms. Lester

1 pictures? Ms. Masella put them up as well during her main
2 summation. Some of the photos were of Mr. Abdulkader. He took
3 those photos with that phone. Some of the photos were of
4 Jermaine Dore and Janiel Brown. Jermaine Dore took those
5 photos. Based on those facts, the government submits that you
6 can draw the inference that Dore was one of the robbers who
7 took Youssef Abdulkader's cell phone and laptop on that night.
8 He participated in that robbery. That's all there is to
9 circumstantial evidence, drawing a logical inference.

10 I want to talk for a minute again about another
11 distraction that the defense raised in their summation, and
12 that is about the lack of DNA evidence or the lack of
13 fingerprint evidence in the case. Again, the government
14 submits that this is just a distraction from the mountain of
15 evidence that you do actually have putting the defendants in
16 these robberies, but nevertheless, we'll address it.

17 In terms of the DNA and fingerprint evidence, the
18 judge will tell you that there's no requirement that the
19 government prove its case in any particular way or undertake
20 any particular investigative technique. So the fact that some
21 things weren't tested, for example, the Salahi residence for
22 fingerprint, you heard no evidence about that, and the defense
23 counsel pointed it out.

24 It actually proves nothing. The government, the
25 police department aren't obligated to undertake any particular

D3itdor2

Rebuttal - Ms. Lester

1 type of investigative test.

2 Second, we know why there wasn't any DNA or
3 fingerprint evidence recovered that could link these defendants
4 to the scene. They took great pains not to leave anything
5 behind. You heard time and time again that they wore masks,
6 and gloves, they took the time to wipe down the Mercedes inside
7 and out after the homicide specifically to make sure that no
8 biological evidence was recovered. That's why nothing was
9 recovered in this case, because the defendants were savvy and
10 they took steps to make sure there wasn't anything there.

11 Now Mr. Roth also mentioned a little bit the judge's
12 instruction on reasonable doubt and what you need in order to
13 determine whether there is reasonable doubt in a case.
14 Mr. Roth basically applied a reasonable doubt is kind of an
15 impossible standard, it would have to be something that you
16 would take into account in making a very important decision in
17 your life, a decision that is more important than buying a
18 house or getting married.

19 But reasonable doubt is not an impossible standard.
20 It's not beyond any doubt. It's beyond a reasonable doubt.
21 And from the time that this country was founded until now the
22 standard in criminal cases has always been beyond a reasonable
23 doubt. If it was an insurmountable standard, no one would ever
24 be convicted of a crime. So you know that that can't be the
25 case. Is it a high burden? Yes. Is it an insurmountable

D3itdor2

Rebuttal - Ms. Lester

1 burden? No. Have we met the burden in this case? Absolutely.
2 The defendants are guilty as charged.

3 Now the time has come, ladies and gentlemen, for you
4 to begin your deliberations and evaluate the mountain of
5 evidence in this case, and because of the careful attention
6 that you paid over the past two weeks, the defendants have had
7 a fair trial. And now it's time for you to do your duty, go
8 back to that jury room and decide the case based on the
9 principles that Judge Sullivan will instruct you on. Decide
10 the case without fear, without prejudice, and without sympathy.
11 Decide the case based on the evidence that you have seen and
12 heard. If you do that, we submit the one conclusion that is in
13 line with the evidence and with justice is that both defendants
14 are guilty beyond a reasonable doubt.

15 THE COURT: Thank you, Ms. Lester.

16 OK, ladies and gentlemen, I'm going to instruct you on
17 the law, but I think that might take over an hour or more. So
18 why don't we take a short break, you can go get a drink of
19 water, use the restroom, have a cookie, then I will instruct
20 you on the law and finally the case will be yours. So don't
21 discuss the case, it's almost yours already, but not yet. I'll
22 see you in ten minutes.

23 All rise for the jury.

24 (Jury not present)

25 THE COURT: I think at this point I would like to

D3itdor2

1 bring out Mr. Mills and ask him about just where he resides and
2 get a little more information concerning the Astoria address
3 that he provided. Anybody have a problem with that?

4 MS. FONTIER: No, your Honor.

5 MS. MASELLA: No, your Honor the.

6 THE COURT: Let's bring him out.

7 (Juror present)

8 THE COURT: Mr. Mills, I wanted to follow up with you
9 on something.

10 JUROR: Sure.

11 THE COURT: I understand that you mentioned to
12 Mr. Halegua that you're reside anything Astoria, or at least
13 staying there temporarily.

14 JUROR: Yeah.

15 THE COURT: So tell me about that. You told me before
16 that the county of your residence was in Westchester.

17 JUROR: Yeah.

18 THE COURT: Are you now living in Astoria?

19 JUROR: Yeah, I mean I live in Astoria but my official
20 residence is in Westchester.

21 THE COURT: What do you mean by official residence?

22 THE JUROR: That where I grew up. That's where my
23 mail goes. That's what I list as my official residence.

24 THE COURT: How long have you been living in Astoria?

25 JUROR: So I have been living in the city for the past

D3itdor2

1 two years. At first I was living in Astoria for about eight
2 months, then I moved into Manhattan for about five months, then
3 I moved back to Astoria for about a year and a few months.

4 THE COURT: All right. So you sleep in Astoria most
5 nights during the week?

6 THE JUROR: Yeah, but you certainly get why I keep my
7 official residence in Westchester, that's my permanent
8 residence.

9 THE COURT: All right. But this creates a bit of an
10 issue just because in order to be on a jury in the Southern
11 District of New York you have to actually reside in the
12 Southern District of New York. So one's residence can I guess
13 best interpreted or defined in a number of ways, but certainly
14 you haven't lived in Westchester for a couple of years, is that
15 what you're saying?

16 THE JUROR: Yeah.

17 THE COURT: All right. Let me ask the lawyers if they
18 have any follow-up questions.

19 So you have been in Astoria really for the last year or
20 more?

21 THE JUROR: Yeah.

22 THE COURT: All right. I want to talk to the lawyers.
23 Don't discuss with anyone in the jury room what we have just
24 talked about, but I think I may need to follow up with them.

25 THE JUROR: OK.

D3itdor2

1 THE COURT: You may go back to the jury room.

2 All rise for Mr. Mills.

3 (Juror not present)

4 THE COURT: I'm not sure what one's official residence
5 means exactly. Residency for purposes of like diversity admits
6 various definitions, but I think in terms of residence for jury
7 service I think we have difficulty keeping Mr. Mills on this
8 jury, but I want to hear from you folks. Anybody think that
9 because his mail goes to Westchester, even though he doesn't go
10 there, that he is in fact a residence of the Southern District
11 of New York as opposed to the Eastern District?

12 MS. FONTIER: Your Honor, it seems to me that he is in
13 fact a residence of the Eastern District of New York, but I
14 don't pretend to know the rule on whether it's your domicile
15 versus your permanent residence that counts for jury service.
16 So I would leave it at your Honor's discretion because I don't
17 know that.

18 THE COURT: OK. Anyone else have any thoughts?
19 Mr. Roth?

20 MR. ROTH: I would have thought it was the domicile,
21 which he's not domiciled in Westchester, but --

22 THE COURT: Government?

23 MS. MASELLA: We don't really know the details either,
24 your Honor. It does seem clear that if his official residence
25 is Westchester he couldn't be served to serve in the Eastern

D3itdor2

1 District either, if that makes a difference.

2 THE COURT: Couldn't or wouldn't be. In other words,
3 if he didn't have any mailing address because he doesn't tell
4 anyone to send him mail there, he's not registered to vote
5 there. I presume all his mail goes to Westchester is what he
6 said, so I don't think that's going to be sufficient.

7 I may take a minute just to do a little bit of
8 research, which may slow us down for a bit, but I think that we
9 need to resolve this obviously now. I suppose I could ask
10 somebody in chambers to check this out while we're doing the
11 charge. That might be the most efficient way. But let me at
12 least take a break and discuss this with Mr. Halegua or others
13 in my chambers.

14 (Recess taken)

15 THE COURT: We're going to read the charge, you folks
16 have a copy to follow along?

17 MS. MASELLA: Yes.

18 THE COURT: So I have got a law clerk checking out
19 what it means to reside in the district. 28, USC, 1865
20 requires that to be eligible to serve on a jury you have to be
21 18 years of age and to have resided in the district for a
22 period of one year.

23 The answer to the question of what it means to reside
24 in a place as opposed to having your mail go to a place, my
25 inclination is that Mr. Mills is probably not going to be able

D3itdor2

1 to serve. I think we're going to be losing him, but I have
2 another law clerk looking at this.

3 So by the time the charge is over, we can take a short
4 break, I will meet you folks at the side bar to see if I read
5 anything wrong or there's some other mistakes or oversights in
6 the charge. At that point I think we'll probably talk about
7 what we'll do with Mr. Mills.

8 All right. So let's bring in the jury.

9 (Jury present)

10 THE COURT: We're now at this point in the trial where
11 I instruct you on the law. Because the law requires a certain
12 amount of precision, I'm going to end up reading much of this.
13 I am always reluctant to do that because it's hard to read a
14 document and maintain any kind of connection to your audience,
15 but the alternative is that I memorize 90 pages or something,
16 which is not an option.

17 Bear in mind that you will have a copy of these
18 instructions with you in the jury room, so you can refer to
19 them. I invite to you do that. And if you have any questions
20 about them, you can send me a note, but we'll spend a little
21 bit of time now, probably 60 to 90 minutes, on which I will
22 instruct you on the law. So pay attention, give me as much
23 attention as you gave, bearing in mind if there are parts that
24 are complicated you will have the charge to look at yourselves.
25 And you'll be able to refer to it along with the indictment,

D3itdor2

1 the exhibit list, the witness list, and the verdict form. So
2 you'll each have a copy. I have a binder for each of you that
3 will have all of those documents.

4 So take a deep breath, sit back, here we go.

5 Members of the jury you have now heard all of the
6 evidence in the case, as well as the final arguments of the
7 parties. We have reached the point where you're about to
8 undertake your final function as jurors. You have paid careful
9 attention to the evidence, and I'm confident that you are act
10 together with fairness and impartiality to each a just verdict
11 in this case.

12 My duty at this point is to instruct you as to the
13 law. It is your duty, as I told you before, to accept these
14 instructions of law and to apply them to the facts as you
15 determine them, just as it has been my duty to preside over the
16 trial and to decide what testimony and what evidence was proper
17 under the law for your consideration.

18 On these legal matters, my instructions, you must take
19 the law as I give it to you. If any attorney or witness has
20 stated a legal principle that is different from any that I
21 state to you here in my instructions, it's my instructions that
22 you must follow.

23 Some of the lawyers gave you little previews of what I
24 may say. I let them do it, some judges don't. But the bottom
25 line is this: If there is anything that they told you that is

D3itdor2

1 different from what I tell you, I win. So you follow my
2 instructions on the law.

3 You are to consider these instructions together as a
4 whole; in other words, you are not to isolate or give undue
5 weight to any particular instruction or particular subset of
6 instructions. It's the whole thing that is the instruction,
7 that is the charge.

8 Now as members of the jury you are the sole and
9 exclusive judges of the facts. You pass upon the evidence.
10 You determine the credibility of the witnesses. You resolve
11 such conflicts as there may be in the testimony. You draw
12 whatever reasonable inferences you decide to draw from the
13 facts as you have determined them, and you determine the weight
14 of the evidence.

15 It is your sworn duty, and you have taken an oath as
16 jurors to determine the facts and to follow the law as I give
17 it to you. So again, you must not substitute your own notions
18 or opinions of what the law is or ought to be.

19 I remind that you in reaching your verdict you are to
20 perform your duty of finding the facts without bias or
21 prejudice as to any party. You must remember that all parties
22 stand as equals before a jury in the courts of the United
23 States. You must also remember that it would be improper for
24 you to allow any feelings you might have about the nature of
25 the crimes charged to interfere with your decision-making

D3itdor2

1 process.

2 This case is important to the defendants who are
3 charged with serious crimes. Equally, it is important to the
4 government, for the enforcement of criminal laws is a matter of
5 prime concern to the public.

6 The fact that the prosecution is brought in the name
7 of the United States, does not entitle the government or its
8 witnesses to any greater consideration than that accorded to
9 any other party. By the same token, the government is entitled
10 to no less consideration. The government and the defendants
11 stand as equals at the bar of justice. Your verdict must be
12 based solely on the evidence or the lack of evidence.

13 Now I will instruct you on the presumption of
14 innocence and the government's burden of proof in this case.
15 The defendants before you have pleaded not guilty. In so
16 doing, the defendants have denied every allegation charged
17 against them. As a result of the defendants' pleas of not
18 guilty, the burden is on the prosecution to prove each
19 defendant's guilt beyond a reasonable doubt. This burden never
20 shifts to the defendant for the simple reason that the law
21 never imposes upon a defendant in a criminal case the burden or
22 duty of calling any witness or producing any evidence.

23 The law presumes the defendants to be innocent of all
24 charges against them. I therefore instruct you that the
25 defendants are to be presumed by you to be innocent throughout

D3itdor2

1 your deliberations.

2 The defendants began this trial here with a clean
3 slate. The presumption of innocence alone is sufficient to
4 acquit each of the defendants unless you as the jurors are
5 unanimously convinced beyond a reasonable doubt of each
6 defendant's guilt after a careful and impartial consideration
7 of all the evidence in this case. If the prosecution fails to
8 sustain its burden as to a particular defendant on a particular
9 count of the indictment, then you must find that defendant not
10 guilty on that particular count. This presumption was with the
11 defendants when the trial began, remains with them even now as
12 I am speaking to you, and will continue with them during your
13 deliberations unless and until you are convinced that the
14 prosecution has proven them guilty beyond a reasonable doubt.

15 Now the question naturally presents itself: What is a
16 reasonable doubt? The words almost define themselves. It is a
17 doubt that a reasonable person has after carefully weighing all
18 of the evidence. It is a doubt that would cause a reasonable
19 person to hesitate to act in a matter of importance in his or
20 her personal life. Proof beyond a reasonable doubt must,
21 therefore, be proof of such a convincing character that a
22 reasonable person would not hesitate to rely and act upon it in
23 the most important of his or her own affairs. A reasonable
24 doubt is not caprice or whim. It is not speculation or
25 suspicion. It is not an excuse to avoid the performance of an

D3itdor2

1 unpleasant duty. And it is not sympathy.

2 In a criminal case, the burden is at all times upon
3 the prosecution to prove guilt beyond a reasonable doubt. The
4 law does not require that the prosecution prove guilt beyond
5 all possibly doubt; rather, proof beyond a reasonable doubt is
6 sufficient to convict. The burden never shifts to the
7 defendant, which means that it is always the prosecution's
8 burden to prove each of the elements of the crime charged
9 against the defendant beyond a reasonable doubt.

10 If, after a fair and impartial consideration of all of
11 the evidence or the lack of evidence, you have a reasonable
12 doubt as to the count and to the particular defendant you are
13 considering, then must acquit the defendant on that count. On
14 the other hand, if after fair and impartial consideration of
15 all the evidence you are satisfied of the guilt of each of the
16 defendants beyond a reasonable doubt, it is your duty to
17 convict the defendants.

18 Now in determining these facts, you must rely on your
19 own recollection of the evidence. And I want to remind you now
20 what is evidence. Evidence, as I told you at the beginning of
21 the trial, consists of the testimony of witnesses, the exhibits
22 that have been received in evidence, and the stipulations of
23 the parties.

24 The statements and arguments made by the lawyers are
25 not evidence. Their arguments are intended to convince what

D3itdor2

1 you conclusions you should draw from the evidence or lack of
2 evidence. As I said before, those arguments are important.
3 You should weigh them and evaluate them carefully, but you must
4 not confuse them with evidence. As to what the evidence was at
5 this trial, it is your recollection that governs, not the
6 statements of the lawyers.

7 With regard to this, you should also bear in mind that
8 a question put to a witness is never evidence. It is the
9 answer to that question that is evidence. One exception to
10 this is that you may not consider any answer that I directed
11 you to disregard or that I ordered be stricken from the record.
12 You are not to consider such answers.

13 There are two types of evidence that may properly be
14 considered by you in deciding whether the defendant you are
15 considering is guilty or not guilty of the crimes with which he
16 is charged.

17 One type of evidence is called direct evidence.
18 Direct evidence of a fact in issue is presented when a witness
19 testifies to that fact based on what he or she personally saw,
20 heard, or observed. In other words, when a witness testifies
21 about a fact in issue on the basis of that witness's own
22 knowledge by virtue of what he sees, feels, touches or hears,
23 that is direct evidence of that fact.

24 The second type of evidence is circumstantial
25 evidence. Circumstantial evidence is evidence that tends to

D3itdor2

1 prove a disputed fact indirectly by proof of other facts.

2 There is a simple example that is used in this courthouse. It
3 was used since I was a pup. It was used for 50 years. There
4 was an allusion to it. You heard other examples, but I will
5 give you the one that I always give.

6 Assuming when you came in the courthouse today the sun
7 was shining, it was beautiful day outside, the green shade were
8 closed so you couldn't look outside. Assume further that as
9 you were sitting here someone walked into the courtroom with an
10 umbrella that was dripping wet. Soon after that, someone else
11 walked into the courtroom with a raincoat that was also
12 dripping wet. Because you could not look outside the window
13 and because you couldn't go outside you couldn't see whether it
14 was raining, you would have no direct evidence of that fact.
15 But on the combination of facts that I asked to you assume, it
16 would be reasonable and logical for you to conclude that it was
17 raining based on the raincoat and the umbrella. That's all
18 there is on circumstantial evidence. You infer on the basis of
19 your reason, experience, and common sense from one established
20 fact the existence or the non-existence of another fact.

21 Now the matter of drawing inferences from facts in
22 evidence is not a matter of guesswork or speculation. An
23 inference is a logical, factual conclusion that you might
24 reasonably draw from other facts that have been proven.

25 Many material facts, such as state of mind, are rarely

D3itdor2

1 easily proven by direct evidence. Usually such facts are
2 established by circumstantial evidence and the reasonable
3 inferences you draw. Circumstantial evidence may be given as
4 much weight as direct evidence. The law makes no distinction
5 between direct and circumstantial evidence, but simply requires
6 that before convincing a defendant, the jury must be satisfied
7 that the defendant's guilt beyond a reasonable doubt, based on
8 all of the evidence in the case.

9 You should draw no inferences or conclusion for or
10 against any party by reason of lawyers making objections or by
11 my rulings on those objections. Counsel not only have the
12 right, they have the duty to make legal objections when they
13 think such objections are appropriate.

14 Of course, as I told you before, nothing that I say is
15 evidence. So if I commented on the evidence at any time, do
16 not accept my statements in place of your own recollection or
17 your own interpretation. It is your recollection and your
18 interpretation that govern.

19 Similarly, you should not draw any inference from any
20 of my rulings. The rulings I made during trial are no
21 indication of any view on my part. You should not seek to find
22 any such view or opinion on my part, nor should you speculate
23 to what I might be thinking.

24 Further, don't concern yourself with what was said at
25 side bar conferences or during my discussions with counsel.

D3itdor2

1 Those discussions related to rulings of law, they're not
2 relevant to your deliberations on the facts.

3 Now certain exhibits, I think just a couple, will have
4 portions that are redacted or blacked out. This is generally
5 because the material that was redacted was not sufficiently
6 relevant to the case. You should not speculate as to what may
7 have been redacted or why. Neither the content nor the fact
8 that it was redacted is relevant to the questions that you must
9 determine.

10 At times I may have admonished a witness or directed a
11 witness to respond to questions or keep his or her voice up.
12 At times I myself may have asked a question or two. Any
13 questions that I asked, or any instructions that I gave, were
14 only intended only to clarify the presentation of evidence and
15 bring out something that I thought might be unclear. Again,
16 you should draw no inference or conclusion of any kind,
17 favorable or unfavorable, with respect to any witness or any
18 party in this case, by reason of any comment, question or
19 instruction of mine.

20 Nor should you infer that I have any views as to the
21 credibility of any witness, as to the weight of the evidence,
22 or as to how you should decide any issue that is before you.
23 That is your role. I respect your role. I'm not going to
24 trespass on your role, just as I expect you will respect my
25 role, which is to instruct you on the law, and you will not

D3itdor2

1 substitute your views on the law for my instructions. I
2 wouldn't presume to tell you anything about the facts, so don't
3 think that I even have opinions on the facts.

4 Finally, the personalities and the conduct of counsel,
5 the lawyers, are not in any way an issue in this case. If you
6 formed opinions of any kind about any of the lawyers, favorable
7 or unfavorable, whether you approved or disapproved of their
8 behavior at trial, those opinions cannot and should not enter
9 into your deliberations.

10 Now I want to give you a few instruction as to how you
11 may determine whether witnesses are credible and reliable,
12 whether the witnesses told the truth at this trial, and whether
13 they knew what they were talking about. How do you determine
14 that? Well, it's really just a question of using your common
15 sense, your good judgment, and your experience.

16 First, you should be consider how well a witness was
17 able to observe or hear what he or she testified about. The
18 witness may be honest, but mistaken. How did the witness's
19 testimony impress you? Did the witness appear to be testifying
20 honestly or candidly? Were the witness's answers direct or
21 were they evasive? Consider the witness's demeanor, manner of
22 testifying, and the strength and accuracy of the witness's
23 recollection. Consider whether any outside factors might have
24 affected a witness's ability to perceive events.

25 Consider the substance of the testimony. How does the

D3itdor2

1 witness's testimony compare with other proof in the case? Is
2 it corroborated or is it contradicted by other evidence? If
3 there was a conflict, does any version appear reliable, if so,
4 which version seems more reliable?

5 In addition, you may consider whether a witness has
6 any possible bias or relationship with a party or any possible
7 interest in the outcome of the case. Such a bias or
8 relationship does not necessarily make that witness unworthy of
9 belief, these are simply factors that you may consider.

10 If a witness made statements in the past that are
11 inconsistent with his or her testimony during the trial
12 concerning facts that are at issue here, you may consider that
13 fact in deciding how much of the testimony, if any, to believe.
14 In making this determination, you may consider whether the
15 witness purposefully made a false statement or whether it was
16 an innocent mistake. You may also consider whether the
17 inconsistency concerns an important fact or merely a small
18 detail, as well as whether the witness had an explanation for
19 the inconsistency, and if so, whether that explanation appealed
20 to your common sense.

21 If you find that a witness has testified falsely as to
22 any material fact, or if you find that a witness has been
23 previously untruthful when testifying under oath or otherwise,
24 you may accept that witness's testimony in its entirety, or you
25 may accept only those parts that you believe to be truthful or

D3itdor2

1 that are corroborated by other independent evidence in the
2 case. That's all up to you.

3 Now under your oath as jurors, you are not to be
4 swayed by sympathy. You are to be guided solely by the
5 evidence in this case, and the crucial question that you must
6 ask yourself as you sift through the evidence is this: Has
7 the prosecution proved the defendant's guilt beyond a
8 reasonable doubt.

9 It's for you and you alone to decide whether the
10 prosecution has proved that the defendants are guilty of the
11 crimes charged solely on the basis of the evidence and subject
12 to the law as I instructed you. It must be clear to you that
13 once you let fear, prejudice, bias, or sympathy interfere with
14 your thinking, there is a risk that you will not arrive at a
15 true and just verdict.

16 If you have a reasonable doubt as to a particular
17 defendant's guilt, then you must render a verdict of acquittal
18 on the charge against that particular defendant. On the other
19 hand, if you find that the prosecution has met its burden of
20 proving the guilt of a particular defendant beyond a reasonable
21 doubt with respect to a particular count, then you should not
22 hesitate because of sympathy or any other reason to render a
23 verdict of guilty on that charge against that particular
24 defendant.

25 I also caution you that under your oath as jurors, you

D3itdor2

1 cannot allow a consideration of the punishment that may be
2 imposed on the defendants if they are convicted to enter into
3 your deliberations. The duty of imposing sentence in the event
4 of conviction rests exclusively upon the Court, and the issue
5 of punishment may not affect your deliberations as to whether
6 the government has proven the defendants' guilt beyond a
7 reasonable doubt.

8 Now your verdict must be unanimous with respect to
9 each count. Each juror is entitled to his or her own opinion,
10 but you are required to exchange your views with your fellow
11 jurors. This is the very essence of jury deliberation. It is
12 your duty to discuss the evidence. If you have a point of
13 view, and after reasoning with other jurors it appears that
14 your own judgment is open to question, then, of course, you
15 should not hesitate in yielding your own original point of view
16 if you're convinced that the opposite point of view is really
17 one that satisfies your judgment and your conscience. However,
18 you are not to given up a point of view that you
19 conscientiously believe in simply because you're outnumbered or
20 outweighed. You should vote with the others only if you
21 convinced on the evidence, the facts, and the law that it is
22 the correct way to decide the case.

23 Remember, at all times, not partisans. You are
24 judges, judges of the facts. Your sole interest is to seek the
25 truth from the evidence in this case.

D3itdor2

1 Now I want to move from those general instructions to
2 the substantive instructions about the charges in the
3 indictment.

4 As I told you before, the defendants are formally
5 charged in an indictment. As I instructed you at the outset of
6 the case, the indictment is merely a charge or an accusation.
7 It's not evidence, and it does not prove or even indicate
8 guilt. As a result, you are to give it no weight in deciding
9 the defendants' guilt. What matters is the evidence you heard
10 at the trial. Indeed, as I previously noted, the defendants
11 are presumed innocent, and it's the prosecution's burden to
12 prove each of the defendant's guilt beyond a reasonable doubt.

13 Now the indictment in this case contains seven counts.
14 Each count charges a separate offense or crime. Each count
15 must therefore be considered separately by you, and must return
16 a separate verdict on each count.

17 Count One of the indictment charges that from in or
18 about 2010, up to and including in or about January 2012, the
19 defendants conspired or agreed with each other and with other
20 individuals to commit robbery, specifically to commit robberies
21 of individuals believed to possess business proceeds of
22 commercial establishments that sold goods and used materials
23 that had traveled in interstate commerce.

24 Count Two charges that from in or about 2010, up to
25 and including in or about January 2012, during and in relation

D3itdor2

1 to the robbery conspiracy charged in Count One of the
2 indictment, the defendants knowingly did use and carry
3 firearms, and in furtherance of such crime, did possess
4 firearms and did aid and abet the use, carrying, and possession
5 of firearms which were discharged.

6 Count Three charges that on or about October 29, 2011,
7 the defendants Dore and Barrett committed robbery,
8 specifically, a gunpoint robbery of an individual who owns a
9 poultry market that sells goods in interstate commerce inside
10 of an apartment in the vicinity of Radcliff Avenue in the
11 Bronx. During that robbery, approximately \$15,000 in business
12 proceeds were taken. That's Count Three.

13 Count Four charges that on or about October 29, 2011,
14 the defendants Dore and Barrett, during and in relation to the
15 robbery charged in Count Three, knowingly did use and carry
16 firearms, and, in furtherance of such crime, did possess
17 firearms, and did aid and abet the use, carrying, and
18 possession of firearms which were brandished.

19 Count Five charges that on or about December 12, 2011,
20 defendants Dore and Barrett committed robbery, specifically,
21 Dore and Barrett robbed at gunpoint three victims engaged in a
22 transaction involving the sale of cigarettes in the vicinity of
23 267 South Fourth Avenue in Mount Vernon, New York, during which
24 robbery one of the victims was shot and killed.

25 Count Six charges that on or about December 12, 2011,

D3itdor2

1 defendants Dore and Barrett, during and in relation to the
2 robbery charged in Count Five, knowingly did use and carry
3 firearms, and, in furtherance of such crime, did possess
4 firearms, and did aid and abet the use, carrying and possession
5 of firearms, which were discharged.

6 Finally Count Seven charges that on or about
7 December 12, 2011, defendants Dore and Barrett, during and in
8 relation to the robbery charged in Count Five of the
9 indictment, did use and carry a firearm, and in furtherance of
10 such crime, did possess a firearm, and did aid and abet the
11 use, carrying, and possession of a firearm, and in the course
12 of that crime, did cause the death of a person through the use
13 of a firearm, specifically, that Dore and Barrett robbed at
14 gunpoint three victims engaged in the transaction involved the
15 sale of cigarettes in the vicinity of 267 South Fourth Avenue
16 in Mount Vernon, New York, during which robbery one of the
17 victims was shot and killed.

18 As I just indicated, the indictment contains a total
19 of seven counts. Each count constitutes a separate offense or
20 crime, and you must consider each count of the indictment
21 separately. I'm going to send you a copy of the indictment.
22 It will be in your binder. So you don't have to write it all
23 down if you don't want to. You certainly are free to take
24 notes now, as you did during the trial, but I will give a copy
25 of the indictment.

D3itdor2

1 We'll talk about Count One the robbery conspiracy.
2 The first count of indictment charges that the defendants
3 violated Section 1951 of Title 18 of the United States Code.
4 That section provides as follows. I'm quoting now from the
5 code, the law passed by Congress:

6 "Whoever in any way or degree obstructs, delays, or
7 affects commerce or the movement of any article or commodity in
8 commerce, by robbery or extortion or attempts or conspires to
9 do so, or commits or threatens physical violence to any person
10 or property in furtherance of a plan or purpose to do anything
11 in violation of this section, shall be guilty of a crime."

12 Now Count One charges specifically, I'm now going read
13 from the indictment, as follows:

14 "From at least in or about 2010, up to and including
15 in or about January 2012, in the Southern District of New York
16 and elsewhere, Jermaine Dore, also known as "St. Kitts," also
17 known as "Blaqs," and Dwayne Barrett, also known as "Tall Man,"
18 the defendants, and others known and unknown, unlawfully and
19 knowingly did combine, conspire, confederate, and agree
20 together and with each other to commit robbery, as that term is
21 defined in Title 18, United States Code, Section 1951(b)(1),
22 and would and did thereby obstruct, delay, and affect commerce
23 and the movement of articles and commodities in commerce, as
24 that term is defined in Title 18, United States Code, Section
25 1951(b)(3), to wit, Dore and Barrett agreed to commit robberies

D3itdor2

1 of individuals and businesses involved in commercial activities
2 that affected interstate commerce."

3 So now let me instructed you on the law of conspiracy.
4 A conspiracy is a crime kind of criminal partnership, an
5 agreement of two or more persons to join together to accomplish
6 some unlawful purpose.

7 The crime of conspiracy to commit robbery is an
8 independent offense separate and distinct from an actual
9 robbery offense. Indeed, you may find that the defendants
10 guilty of the crime of conspiracy to commit robbery even if
11 there was no actual robbery committed. Congress has deemed it
12 appropriate to make conspiracy standing alone a separate crime,
13 even if a conspiracy is not successful and no robberies were
14 ever committed.

15 Now to meet its burden of proving the robbery
16 conspiracy charged in Count One, the prosecution must prove the
17 following two elements beyond a reasonable doubt:

18 First, the prosecution must prove the existence of the
19 robbery conspiracy charged in Count One. And second, the
20 prosecution must prove that the particular defendant you are
21 considering knowingly became a member of the conspiracy.

22 Two elements, and I'm now going to through each of
23 these elements separately. As to Count One, the first element
24 the prosecution must prove beyond a reasonable doubt is the
25 existence of a conspiracy that had as its object the illegal

D3itdor2

1 purposes charged in the indictment.

2 Now a conspiracy is a combination, agreement, or
3 understanding of two or more persons to accomplish by concerted
4 action a criminal or unlawful purpose. The unlawful purpose
5 alleged to have been the object of the conspiracy charged in
6 Count One, is the commission of a robbery or robberies.

7 The gist or the essence of the crime of conspiracy is
8 an unlawful agreement between two or more people, not including
9 a government agent, to violate the law. The first element of
10 the crime of conspiracy thus has two parts, first an agreement,
11 and second, an illegal object of the conspiracy, illegal object
12 of the agreement.

13 I'm now going to describe both parts of this element,
14 the first element to you.

15 First, to meet its burden of proof on this element,
16 the prosecution must show that there was an agreement.
17 However, the government is not required to show that two or
18 more people sat around a table and entered into a solemn pact,
19 orally or in writing, stating that they had formed a conspiracy
20 to violate the law and spelling out all the details of the
21 plans and the means by which the unlawful project was to be
22 carried out or the part that each of the persons who is a party
23 to the conspiracy was going to play. Indeed, it would be quite
24 extraordinary if there were ever such a formal document or
25 specific oral agreement.

D3itdor2

1 Common sense will tell you that when people in fact
2 undertake to enter into a criminal conspiracy, much is left to
3 the unexpressed understanding. Conspirators do not usually
4 reduce their agreements to writing. They don't typically
5 publicly broadcast their plans. By its very nature, a
6 conspiracy is almost always secret in its origin and execution.

7 It is enough if two or more people in some way or
8 manner impliedly or tacitly come to an understanding to violate
9 the law. Express language or specific words are not required
10 to indicate assent or agreement to form the conspiracy. You
11 need only find that two or more people entered into the
12 unlawful agreement alleged in Count One in order to find that a
13 conspiracy existed.

14 In determining whether there has been an unlawful
15 agreement as alleged in Count One, you may judge the proven
16 acts and conduct of the alleged co-conspirators that were taken
17 to carry out the apparent criminal purpose. The old adage,
18 "Actions speak louder than words," is applicable here. Often
19 the only evidence that is available is that of disconnected
20 acts that, when taken together with one another, show a
21 agreement or conspiracy to secure a particular result just as
22 satisfactorily and conclusively as more direct proof.

23 When people enter into a conspiracy to accomplish an
24 unlawful end, they become agents or partners of one another in
25 carrying out the conspiracy. In determining the factual issues

D3itdor2

1 before you, you may take into account against the defendant any
2 acts done or statements made by any of the alleged
3 co-conspirators during the course of conspiracy, even though
4 such acts or statements were not made in the presence of the
5 defendant, or were made with without his knowledge.

6 Of course, proof concerning the accomplishment of the
7 object of the conspiracy may be the most persuasive evidence
8 that the conspiracy itself existed, but it's not necessary, as
9 I said, that the conspiracy actually succeeded for you to
10 conclude that it existed. In deciding whether the conspiracy
11 charged in Count One existed, you may consider all the evidence
12 of the acts, conduct, and statements of the alleged
13 conspirators, and the reasonable inferences to be drawn from
14 that evidence.

15 It is sufficient to establish the existence of a
16 conspiracy if, after considering all of the relevant evidence,
17 you find beyond a reasonable doubt that the minds of at least
18 two alleged conspirators met in an understanding way and that
19 they agreed, as I explained, to work together to accomplish the
20 object or objective of the conspiracy charged in Count One.

21 In short, the prosecution must prove beyond a
22 reasonable doubt that at least two alleged conspirators came to
23 a mutual understanding, either spoken or unspoken, to commit a
24 robbery or robberies in the manner charged in Count One.

25 Now the second part of the first element relates to

D3itdor2

1 the object or the objective of the conspiracy. Count One of
2 the indictment charges that the object of the conspiracy was to
3 commit a robbery or robberies. Specifically, I'm now going to
4 read from the indictment again, the prosecution alleged that:

5 "Dore and Barrett agreed to commit robberies of
6 individuals and businesses involved in commercial activities
7 that affected interstate commerce."

8 Now a robbery is the unlawful taking of personal
9 property from another against his or her will. This is done by
10 threatening or actually using force, violence, or fear of
11 injury, immediately or in the future, to person or property.

12 In order to find the defendants conspired to commit
13 robbery, you must find that the government proved beyond a
14 reasonable doubt that the object of the conspiracy was to
15 either obtain or take personal property from another or from
16 the presence of another -- not either or, let me start over.

17 You must find the government proved beyond a
18 reasonable doubt that the object of the conspiracy was to:
19 (1), obtain or take the personal property of another, or from
20 the presence of another, or attempts to do so, (2), against the
21 intended victim's will by actual or threatened force, violence
22 or fear of injury, whether immediate or in the future, (3),
23 such that the co-conspirators' actions would have in any way or
24 degree obstructed, delayed, or affected interstate commerce.

25 Now I will discuss these elements in detail in a few

D3itdor2

1 minutes, when I explain the elements of the substantive robbery
2 counts, Counts Three and Five, so I will come back to that.
3 But for now we'll focus on the second element of the
4 conspiracy, membership in the conspiracy.

5 If you conclude that the prosecution has proven beyond
6 a reasonable doubt that the conspiracy charged in the
7 indictment existed, and that the conspiracy had as its object
8 the illegal purpose charged in the indictment, then you must
9 next determine the second question, which is whether the
10 particular defendant you are considering participated in the
11 conspiracy with knowledge of its unlawful purpose and in
12 furtherance of issue unlawful objective.

13 The prosecution must prove beyond a reasonable doubt
14 that each defendant unlawfully and knowingly entered into the
15 conspiracy, that is, with a purpose to violate the law, and
16 that each defendant agreed to take part in the conspiracy to
17 promote and cooperate in its unlawful objective.

18 The terms "unlawfully" and "knowingly" are used because
19 if you find that the particular defendant you are considering
20 did join the conspiracy, you must also consider whether the
21 prosecution has proven beyond a reasonable doubt that in so
22 doing the defendant knew what he was doing. In other words,
23 the government must prove beyond a reasonable doubt that the
24 defendant joined the conspiracy deliberately and voluntarily.

25 "Unlawfully" simply means contrary to law. The

D3itdor2

1 defendants need not have known they were breaking any
2 particular law, but they must have been aware of the generally
3 unlawful nature of their acts.

4 An act is done "knowingly" if it's done deliberately
5 and purposely; that is, the defendants' acts must have been the
6 product of the defendants' conscious objective rather than the
7 product of a mistake or accident or mere negligence or some
8 other innocent reason.

9 Knowledge, of course, is a matter of inference from
10 the proven facts. Science has not yet determined a manner to
11 look into a person's mind and know what he or she is thinking.
12 You do have before you the evidence of acts alleged to have
13 taken place by or with the defendants or in their presence.
14 The government contends that these acts show beyond a
15 reasonable doubt the defendants' knowledge of the unlawful
16 purpose of the conspiracy.

17 Each of the defendants denies that he was a member of
18 the conspiracy. Specifically, the defendants denied that they
19 committed the alleged acts -- excuse me, the acts alleged by
20 the prosecution to be sufficient that they knowingly joined the
21 charged conspiracy. It is for to you determine whether the
22 prosecution has established beyond a reasonable doubt that the
23 defendants possessed such knowledge and such intent.

24 It's not necessary for the prosecution to show that
25 the defendants were fully informed as to all the details of the

D3itdor2

1 conspiracy in order for you to infer knowledge on the part of
2 the defendants. To have guilty knowledge, the defendant did
3 not need to know the full extent of the conspiracy or all the
4 activities of all the conspiracy's participants. Similarly,
5 it's not necessary for each of the defendants to have known
6 every other member of the conspiracy. In fact, any particular
7 defendant may know only one other member of the conspiracy and
8 may still be considered a conspirator. Nor is it necessary for
9 the defendants to have received any monetary benefit from their
10 participation in the conspiracy, or to have financial stake in
11 the outcome of the alleged joint venture. It is enough if the
12 defendants participated in the conspiracy unlawfully and
13 knowingly, as I defined those terms.

14 The duration and extent of the defendants'
15 participation has no bearing on the issue of the defendant's
16 guilt. The defendant you are considering need not have joined
17 the conspiracy at the outset. The defendant may have joined
18 the conspiracy at any time in its progress and the defendant
19 will be held responsible for all that was done before he joined
20 and all that was done during the conspiracy's existence while
21 he was a member. Each member of a conspiracy may perform
22 separate and distinct acts. Some conspirators play major roles
23 while others play minor roles in the scheme. An equal role is
24 not what the law requires. In fact, even a single act may be
25 sufficient to draw the defendant you are considering within the

D3itdor2

1 scope of the conspiracy.

2 However, I want to caution you that a person's mere
3 association with a member of a conspiracy does not make that
4 person a member of the conspiracy, even when that association
5 is coupled with knowledge that a conspiracy is taking place.
6 Mere presence at the scene of a crime, even coupled with
7 knowledge that a crime is taking place, is not sufficient to
8 support a conviction. In other words, knowledge without
9 agreement and participation is not sufficient. What is
10 necessary is that the defendant you are considering joined in
11 the conspiracy with knowledge of its unlawful purposes and with
12 an intent to aid in the accomplishment of its unlawful
13 objectives.

14 In sum, the prosecution must prove beyond a reasonable
15 doubt that the defendant you are considering, with an
16 understanding of the unlawful character of the conspiracy,
17 knowingly engaged, advised, or assisted in the conspiracy for
18 the purpose of committing a robbery or robberies. The
19 defendant thereby became a knowing and willing participant in
20 the unlawful agreement, that is to say, he became a
21 conspirator.

22 Once a conspiracy is formed, it is presumed to
23 continue until either its objective is accomplished or there is
24 some affirmative act of termination by the members. So too,
25 once a person is found to be a member of a conspiracy, he or

D3itdor2

1 she is presumed to continue as a member of the conspiracy until
2 the conspiracy is terminated, unless it is shown by some
3 affirmative proof that the person withdraw or disassociated
4 himself or herself from it.

5 Now Count One of the indictment contains a section
6 entitled "Overt Acts." As I said, you'll have a copy of the
7 indictment while you're in your deliberations. Although the
8 indictment lists overt acts, the prosecution need not prove
9 that the defendants or any accomplice committed any overt act.
10 As I told you, to prove a conspiracy, the prosecution need only
11 prove the unlawful agreement, and the defendants' knowing
12 participation in the conspiracy.

13 Now the indictment charges that the alleged conspiracy
14 existed from in or about 2010 up to and including in or about
15 January of 2012. It is not essential that the prosecution
16 prove that the conspiracy alleged started and ended on any
17 specific dates. Indeed, it's sufficient if you find that the
18 conspiracy was formed, and that it existed for some time within
19 or around the dates set forth in the indictment.

20 This is also a good opportunity to instruct you that
21 it does not matter if a specific event or transaction is
22 alleged to have occurred on or about a certain date and the
23 evidence indicates that it in fact occurred on another date.
24 The law only requires substantial similarity between the dates
25 alleged in the indictment and the dates established by the

D3itdor2

1 testimony and other evidence.

2 Now the government has alleged the existence of only
3 one overall conspiracy. Whether there existed a single
4 unlawful agreement, or many such agreements, or indeed, no
5 agreement at all, is a question of fact for you the jury. If
6 two or more people joined together to further one common
7 unlawful design or purpose, a single conspiracy exists. By way
8 of contrast, multiple conspiracies exist where there are
9 separate unlawful agreements to achieve distinct purposes.

10 As I've explained, if you find that the single alleged
11 conspiracy did not exist, you cannot find any defendant guilty
12 of the single conspiracy charged in the indictment. This is so
13 even if you find that some conspiracy other than the one
14 charged in this indictment existed, even though the purposes of
15 both conspiracies may have been the same, and even though there
16 may have been some overlap in membership. Similarly, if you
17 find that a particular defendant was a member of another
18 conspiracy and not the one charged in the indictment, then you
19 must acquit the defendant on the conspiracy charged.

20 Therefore, what you must do is determine whether the
21 conspiracy charged in the indictment existed. If it did, you
22 then must determine the nature of the conspiracy and who were
23 its members.

24 I'm now going to turn to Counts Three and Five of the
25 indictment which allege that the defendants committed two

D3itdor2

1 particular robberies.

2 Specifically, Count Three of the indictment charges
3 that on or about October 29, 2011, defendants Dore and Barrett
4 committed robbery, specifically a gunpoint robbery of an
5 individual who owns a poultry market that sells goods in
6 interstate commerce inside an apartment in the vicinity of
7 Radcliff Avenue in the Bronx, during which robbery
8 approximately \$15,000 in business proceeds were taken. That's
9 Count Three.

10 Count Five charges that on or about December 12, 2011,
11 defendants Dore and Barrett committed robbery, specifically
12 that Dore and Barrett robbed at gunpoint three victims engaged
13 in a transaction involving the sale of cigarettes in the
14 vicinity of 267 South Fourth Avenue in Mount Vernon, New York,
15 during which robbery one of the victims was shot and killed.

16 Both of these counts also alleged the defendants aided
17 and abetted with the commission of the robbery. In considering
18 each of these counts, you should apply the instructions on
19 aiding and abetting that I will give you later on in my
20 instructions.

21 Now to sustain its burden of proof on Counts Three and
22 Five, the government must prove beyond a reasonable doubt each
23 of the following elements:

24 First, that the defendants obtained or took the
25 property of another, or for an attempted robbery, attempted to

D3itdor2

1 do so.

2 Second, that the defendants did so against the
3 victim's will by actual or threatened force, violence, or fear
4 of injury, whether immediate or in the future.

5 Third, that the defendants' actions actually or
6 potentially, in any way or degree, obstructed, delayed, or
7 affected interstate commerce.

8 And fourth, that the defendants acted unlawfully, and
9 knowingly.

10 So let's take those one at a time.

11 The first element that the government must prove
12 beyond a reasonable doubt for Counts Three and Five is that the
13 defendants knowingly obtained the personal property of another,
14 or from the presence of another, or for an attempted robbery,
15 attempted do so. The term "property" includes tangible and
16 intangible things of value. In this case, the government
17 alleges that the object of the robbery charged in Count Three
18 was the business proceeds from a poultry market, and that the
19 object of the robbery charged in Count Four was the proceeds
20 from a transaction involving the sale of cigarettes. So that's
21 the first element.

22 The second element that the government must prove
23 beyond a reasonable doubt in the robbery charges is that the
24 defendants took or attempted to take -- for attempted robbery,
25 attempted to take -- the personal property of another against

D3itdor2

1 the victim's will by actual or threatened force, violence, or
2 fear of injury, whether immediate or in the future.

3 It is not necessary that the government prove that
4 force, violence, and fear were all used or threatened. The
5 government satisfies its burden in this regard if it proves
6 beyond a reasonable doubt that any of these methods was
7 employed.

8 In considering whether the defendants, or those they
9 were aiding and abetting, used or threatened to use force,
10 violence, or fear, you should give those words their common and
11 ordinary meaning and understand them as you normally would.
12 The violence does not have to be directed at the person whose
13 property was taken. The use of a threat or force or violence
14 might be aimed at a third person. A threat may be made
15 verbally or by a physical gesture. Whether a statement or
16 physical gesture by the defendants actually was a threat
17 depends on the surrounding circumstances.

18 Fear exists if at least one victim experiences
19 anxiety, concern, or worry over expected personal harm. The
20 existence of fear must be determined by the facts existing at
21 the time of the defendant's actions.

22 Your decision as to whether the defendants, or those
23 that were aiding and abetting, used or threatened fear of
24 injury involves a decision about the victim's state of mind at
25 the time of the defendants' actions. It is obviously

D3itdor2

1 impossible to ascertain or prove directly a person's subjective
2 feeling. You cannot look into a person's mind to see what his
3 or her state of mind was, but a careful consideration of the
4 circumstances and the evidence should enable you to decide
5 whether fear would reasonably have been the victim's state of
6 mind.

7 Looking at the situation and the actions of people
8 involved may help you determine what their state of mind was.
9 You can consider this kind of evidence -- what I previously
10 referred to as circumstantial evidence -- in deciding whether
11 property was obtained by the defendants through the use or
12 threat of force. You also heard the testimony of witnesses
13 describing their state of mind, that is, how they felt at a
14 certain moment of time. This testimony was admitted to help
15 you in deciding whether their property was obtained by fear.
16 You should consider this testimony for that purpose only.

17 It is not necessary that the fear be a consequence of
18 a direct threat; it is sufficient that the surrounding
19 circumstances render the victim's fear reasonable. You must
20 mind that a reasonable person would have been fearful under the
21 circumstances.

22 Let me now move to the third element for Counts Three
23 and Five.

24 The third element that the government must prove for
25 each of the robbery counts is that the robbery or attempted

D3itdor2

1 robbery affected interstate or foreign commerce. The
2 requirement of showing an effect on commerce involves only a
3 minimal burden of proving a connection to interstate commerce
4 and is satisfied by conduct that affects commerce in any way or
5 degree. The requirement may be satisfied by a showing of a
6 very slight effect on interstate commerce. Even a potential or
7 subtle effect on commerce will suffice.

8 With regard to this element, it is not necessary for
9 the government to prove that commerce actually was affected by
10 the defendants' conduct. It is sufficient if the alleged
11 robbery or attempted robbery possibly or potentially would have
12 affected interstate or foreign commerce.

13 It is also not necessary for you to find that the
14 defendants intended or anticipated that the effect of their
15 acts, or the acts of those whom they aided and abetted, would
16 be to affect interstate commerce, or that the defendants or
17 those whom they aided and abetted had or shared a purpose to
18 effect commerce. All that is necessary is that the natural
19 effect of the acts committed by either of the defendants, or
20 those whom they aided and abetted, would affect interstate or
21 foreign commerce.

22 Nor do you have to decide whether the effect on
23 interstate commerce was or would have been harmful or
24 beneficial to a particular business or to commerce in general.
25 The government satisfies its burden of proving an effect on

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1 commerce if it proves beyond a reasonable doubt any effect,
2 whether harmful or not.

3 When considering this element, it's important for you
4 to know that the commerce affected or potentially affected need
5 not be lawful. Activities affecting or potentially affecting
6 unlawful interstate activity fall within the purview of this
7 statute.

8 The fourth element that the government must establish
9 beyond a reasonable doubt with respect to the robbery charges
10 is that the defendants acted unlawfully and knowingly. I have
11 already explained those concepts to you, so you should follow
12 my previous instructions on those charges.

13 All right. I now want to turn to the firearms
14 offenses charged in the indictment and instruct you on the
15 elements of Counts Two, Four and Six.

16 Counts Two, Four and Six each allege a violation of
17 Section 924(c) of the federal criminal code. That provision
18 makes it a crime for any person, "during and in relation to any
19 crime of violence, to use or carry a firearm, or in furtherance
20 of any such crime, to possess a firearm."

21 Count Two is a firearms count connected to the robbery
22 conspiracy charged in Count One. This means that you cannot
23 consider Count Two unless you first determine that one or both
24 of the defendants is guilty of the robbery conspiracy charged
25 in Count One.

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1 Count Four is a firearms count connected to the
2 October 29, 2011 robbery charged in Count Three. This means
3 that you cannot consider Count Four unless you first determine
4 that one or both of the defendants is guilty of the robbery
5 charged in Count Three.

6 Count Six is a firearms count connected to the
7 December 12, 2011 robbery charged in Count Five. This means
8 that you cannot consider Count Six unless you first determine
9 that one or both of the defendants is guilty of the robbery
10 charged in Count Five.

11 Now to sustain its burden of proof with respect to
12 Counts Two, Four and Six, charging the defendants with
13 possession of a firearm during and in relation to a crime of
14 violence, the prosecution must prove the following three
15 elements beyond a reasonable doubt:

16 First, that on or about the dates alleged in the
17 indictment, the defendants used or carried or possessed a
18 firearm, or any combination of those acts, or aided and abetted
19 the use, carrying, and possession of a firearm by another.

20 And second, that the defendants used or carried the
21 firearm, or aided and abetted the use and carrying of the
22 foreman, during and in relation to the specified crime of
23 violence, or that the defendants possessed a firearm, or aided
24 and abetted the possession of a firearm, in furtherance of
25 those same crimes.

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1 And third, that the defendants acted knowingly.

2 Let's go to each one of these elements in turn.

3 The first element that the government must prove
4 beyond a reasonable doubt on Counts Two, Four and Six is that
5 on or about the dates set forth in the indictment, the
6 defendants used, carried, or possessed a firearm.

7 Now as used in the statute, the term "firearm" means
8 "any weapon which will or is designed to or may readily be
9 converted to expel a projectile by the action of an explosive."
10 I instruct you that a gun is a firearm.

11 In considering the specific element of whether the
12 defendant used, carried, or possessed a firearm, it does not
13 matter whether the weapon was loaded or operable at the time of
14 the crime. Operability is not relevant to your determination
15 of whether a weapon qualifies as a firearm.

16 In order to prove that the defendants used the
17 firearm, the prosecution must prove beyond a reasonable doubt
18 that there was an active employment of the firearm by the
19 defendants during and in relation to the commission of a crime
20 of violence. This does not mean that the defendants must have
21 actually fired or attempted to fire the weapon, although each
22 of those actions would obviously constitute use of the weapon.

23 Brandishing, displaying or even referring to the
24 weapon so that others present knew that the defendants had the
25 firearm available, if needed, all constitute uses of a firearm.

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1 However, the mere possession of a firearm at or near the site
2 of the crime without active employment, as I just described
3 that term, is not sufficient to constitute use of a firearm.

4 In order to prove that the defendants carried a
5 firearm, the prosecution must prove beyond a reasonable doubt
6 that the particular defendant you are considering had a weapon
7 within his control so that it was available in such a way that
8 it furthered the commission of the crime. The particular
9 defendant you are considering need not have held the firearm
10 physically or have had actual possession of it on his person.

11 If you find that the defendant you are considering had
12 dominion and control over the place where the firearm was
13 located, and had the power and intention to exercise control
14 over the firearm, and that the firearm was immediately
15 available to him in such a way that it furthered the commission
16 of the crime of violence, you may find that the prosecution has
17 proven that the particular defendant carried a firearm.

18 Now the legal concept of "possession" may differ from
19 everyday usage of the term, so let me explain that in some
20 detail.

21 Actual possession is what most of us think about as
22 possession. That's having physical custody or control of an
23 object, like I have this pen. That's actual possession. If
24 you find that the defendant you are considering had the firearm
25 on his person, then you may find that the defendant had

D3itdor2

1 possession of it.

2 However, a person need not have actual physical
3 possession, that is, physical custody of an object, in order to
4 be in legal possession of it. If a person has the ability to
5 exercise substantial control over an object, even if he or she
6 does not have the object in his physical custody, and that
7 person has the intent to exercise such control, then the person
8 is in possession of that article. This is called constructive
9 possession.

10 Control of an object may be demonstrated by the
11 existence of a working relationship between one person having
12 the power or ability to control the item and another person who
13 has actual physical custody. A person having control possesses
14 the firearm because he or she has an effective working
15 relationship with a person who has actual physical custody of
16 the firearm, and because he or she can direct the movement or
17 transfer or disposition of the firearm.

18 In addition, an individual may have possession of an
19 item that is not found on his person because that individual
20 has a relationship to the location where the item is
21 maintained. In this manner, for example, a business person may
22 possess things that are scattered throughout a number of stores
23 or offices or installations throughout the country.

24 More than one person can have control over the same
25 firearm. The law recognizes that possession may be sole or

D3itdor2

1 joint. If one person alone has actual or constructive
2 possession of a thing, possession is sole. If more than one
3 person has possession of it, as I defined possession for you,
4 then possession is joint. That's what is meant by
5 "possession."

6 Finally, possession and ownership are not the same
7 thing. A person can possess an object and not be the owner of
8 the object.

9 Let me give you some examples of possession. As I
10 said before, I have a pen in my hand. There should be no doubt
11 that I physically possess this pen.

12 Another example: Let's say I brought in some candy
13 today and I left it in my chambers across the street near my
14 other law clerks in my chambers. Now my law clerks know they
15 can't eat all the candy, they need to leave some for me and
16 some for Aaron. So I don't physically possess the candy, but I
17 do have control over. Actually I brought a cake today, my wife
18 baked a cake over the weekend, so I brought it in. There
19 better be some left. That's the thing, I have control over the
20 cake. I can be said to possess that cake jointly with my
21 clerks back in chambers.

22 Another example: Say my grandmother left me some
23 jewelry when she died and it's now sitting in a safe deposit
24 box in the bank. My siblings and I are the only ones that can
25 get into that box. Do we have possession of the jewelry in the

D3itdor2

1 box? Absolutely. We have possession of it even though it's in
2 a safe deposit box miles from here. It's not in our hands or
3 homes, but we have possession of it.

4 I want to explain to you the concept of aiding and
5 abetting. The defendants are charged with aiding and abetting
6 in each of the firearms counts in which they are charged.
7 Accordingly, it would be sufficient for this element if the
8 defendants aided and abetted another person in the use,
9 carrying, and possession of a firearm. I'm going to instruct
10 you a little more fully on aiding and abetting in a few minutes
11 but for purposes of this element, I want to give you some
12 additional instruction that applies to aiding and abetting the
13 use, carrying of, or the possession of a firearm.

14 In order to convict a particular defendant of aiding
15 and abetting another's use, carrying of, or possession of a
16 firearm, it is not enough to find that the defendant you are
17 considering performed an act to facilitate or encourage the
18 commission of the underlying crime of violence with only the
19 knowledge that a firearm would be used or carried in the
20 commission of that crime. Instead, you must find that the
21 defendant performed some act that facilitated or encouraged the
22 actual using, carrying of, or possession of the firearm in
23 relation to the underlying crime.

24 For example, if you find that the defendant you are
25 considering directed another person to use, carry or possession

D3itdor2

1 a gun in the commission of the underlying crime, or made such a
2 gun available to the other person, then the defendant aided and
3 abetted the other person's use of the firearm. Or if you find
4 that a particular defendant was present at the scene during the
5 commission of the underlying crime of violence, you may
6 consider whether that defendant's conduct at the scene
7 facilitated or promoting the carrying of a gun and thereby
8 aided and abetted the other person's carrying of the firearm.
9 These examples are only given only by way of illustration and
10 are not meant to be exhaustive.

11 The second element that the government must prove
12 beyond a reasonable doubt with respect to firearms counts, Two,
13 Four and Six, is that the defendant used, carried, or possessed
14 a firearm during and in relation to a crime of violence or in
15 furtherance of such a crime.

16 "In relation to" means that the firearm must have had
17 some purpose, role, or effect with respect to the crime of
18 violence.

19 The use, carrying, or possession of a firearm in
20 furtherance of a crime of violence requires that the defendant
21 used, carried, or possessed a firearm, and that it advanced or
22 moved forward the crime. The mere presence of a firearm is not
23 enough. The use, carrying, or possession in furtherance
24 requires the use, carrying or possession was incident to and an
25 essential part of the crime. The firearm must have played some

D3itdor2

1 part in furthering the crime in order for this element to be
2 satisfied.

3 I instruct you that the robbery conspiracy alleged in
4 Count One and the robberies alleged in Counts Three and Five of
5 the indictment qualify under the law as crimes of violence for
6 which the defendants may be prosecuted in a court of the United
7 States.

8 Now the third element that the prosecution must prove
9 beyond a reasonable doubt with respect to Counts Two, Four and
10 Six is that the defendants knew that they were using, carrying,
11 or possessing a firearm, and that they acted knowingly in doing
12 so.

13 As I previously stated before, an act is done
14 knowingly if it is done purposely and deliberately.

15 So those are the gun counts. I now want to turn to
16 Count Seven, the last count of the indictment.

17 Count Seven of the indictment charges that the
18 defendants violated Section 924(j) of Title 18 of the United
19 States Code. That provision makes it a crime for any person,
20 "in the course of a violation of Section 924(c) to cause the
21 death of a person through the use of a firearm."

22 As I told you previously, Section 924(c) makes it a
23 crime for any person, during and in relation to any crime of
24 violence or drug trafficking crime, to use or carry a firearm,
25 or in furtherance of any such crime, to possess a firearm.

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1 Specifically, Count Seven charges, and I'm now reading
2 from the indictment:

3 "That on or about December 12, 2011, in the Southern
4 District of New York, Jermaine Dore, also known a "St. Kitts,"
5 also known as "Blaqs," and Dwayne Barrett, also known as "Tall
6 Man," the defendants, willfully and knowingly, during and in
7 relation to a crime of violence for which they may be
8 prosecuted in a court of the United States, namely a robbery
9 charged in Count Five of this indictment, did use and carry of
10 a firearm, and in furtherance of such crime, did possess a
11 firearm, and did aid and abet the use, carrying, and possession
12 of a firearm, and in the course of that crime, did cause the
13 death of a person through the use of a firearm, which killing
14 is murder as defined in Title 18, United States Code, Section
15 1111(a), to wit, in the vicinity of 267 South Fourth Avenue in
16 Mount Vernon, New York, Dore and Barrett robbed at gunpoint
17 three victims engaged in a transaction involving the sale of
18 cigarettes, during which robbery one of the victims was shot
19 and killed."

20 Now you may not consider Count Seven unless you first
21 determine that one or both of the defendants are guilty of the
22 robbery charged in Count Five, and the use, carrying, or
23 possession of a firearm in furtherance of that robbery charged
24 in Count Six.

25 There are prerequisites to Count Seven. To convict

D3itdor2

1 the defendants Dore and Barrett of Count Seven, the government
2 must prove each of the five following elements as to each
3 defendant. You may recall that the first two elements are the
4 same as the first two elements of Count Six.

5 So the first element is on or about December 12, 2011,
6 the defendants used, carried, or possessed a firearm.

7 Second, the second element is that the defendants used
8 or carried a firearm during and in relation to a crime of
9 violence, or possessed a firearm in furtherance of such crime.

10 Third, the government must prove that the defendants
11 caused the death of a person through the use of a firearm.

12 Fourth, that the death of that person qualifies as a
13 murder, as I will define that term for you in a moment.

14 And fifth, that the defendants acted knowingly,
15 unlawfully and willfully.

16 The first element that the government must prove
17 beyond a reasonable doubt with respect to Count Seven is that
18 on or about December 12, 2011, the defendants used, carried, or
19 possessed a firearm. I have already instructed you on the
20 definitions of these terms in my discussions on Counts Two,
21 Four and Six, so you should follow my instruction, it's the
22 same element.

23 The second element that the government must prove
24 beyond a reasonable doubt on Count Seven is that the defendant
25 you are considering used or carried of a firearm during and in

D3itdor2

1 relation to a crime of violence, or possessed a firearm in
2 furtherance of such crime. I already instructed you on the
3 definition of these terms in my discussion of Counts Two, Four
4 and Six, so you should follow my instructions here, it's the
5 same.

6 The third element that the government must prove
7 beyond a reasonable doubt on Count Seven is that the defendant
8 you are considering caused the death of another person through
9 the use of a firearm. The defendant's conduct may be found to
10 cause the death of another individual if it had such an effect
11 in producing that individual's death as to lead a reasonable
12 person to regard the defendant's conduct as a cause of death.
13 The death of a person may have more than one cause. You need
14 not find that the defendant are you considering shot the victim
15 or that he committed the final fatal act. The government need
16 only prove that the conduct of the defendant you are
17 considering was a substantial factor in causing the victim's
18 death.

19 The fourth element of Count Seven that the government
20 must prove beyond a reasonable doubt is that the death of the
21 person qualifies as a murder. In considering Count Seven, you
22 should apply the following definition of murder which comes
23 from Section 1111 of the Federal Criminal Code. That section
24 provides as follows, "Murder is the unlawful killing of a human
25 being with malice aforethought. Every murder perpetrated by

D3itdor2

1 poison, lying in wait, or any other kind of willful,
2 deliberate, malicious, and premedicated killing, or committed
3 in the perpetration of or attempt to perpetrate certain crimes,
4 including robbery, qualifies as murder."

5 In this case, the government is proceeding on the last
6 theory of murder, also known as a felony murder, that is, the
7 killing took place while the defendants were perpetrating or
8 attempting to perpetrate the robbery on December 12, 2011. To
9 be guilty of felony murder, the defendants do not have to set
10 out to the commit a murder. It is enough if you determine that
11 the defendants set out to commit the robbery, and the death of
12 the victim occurred during the course of that robbery.

13 Now the final element that the government must prove
14 beyond a reasonable doubt on the firearm count alleged in Count
15 Seven is that the defendant you are considering knew that he
16 was using, carrying, or possessing a firearm, and that he acted
17 willfully in doing so.

18 To satisfy this element, you must find that the
19 defendant you are considering had knowledge that what he was
20 carrying or using was a firearm, as that term is generally
21 used. An act is done knowingly if done purposefully and
22 voluntarily, as opposed to mistakenly or accidentally. You will
23 recall that I instructed you earlier that to determine that
24 someone acted knowingly requires you to make a finding as to
25 that person's state of mind. In order for the government to

D3itdor2

1 satisfy this element, it must prove that the defendant you are
2 considering knew what he was doing. For example, that he knew
3 that he was carrying or using a firearm in the commission of a
4 crime of violence. It is not necessary, however, for the
5 government to prove that any defendant knew that he was
6 violating any particular law, nor is it necessary for the
7 government to prove that either defendant specifically intended
8 for the victim to be killed.

9 Now I want to go back to the concept of aiding and
10 abetting. I told you about that before. I want to instruct
11 you on the concept aiding and abetting -- well, with respect to
12 Counts Three and Five, that's the robbery counts, and then
13 Counts Two, Four and Six, those are the firearms charges, and
14 Count Seven, which is the murder charge, the defendants can be
15 convicted under a theory of criminal liability known as "aiding
16 and abetting" liability.

17 Aiding and abetting liability is its own theory of
18 criminal liability. In effect, it's a theory of liability that
19 permits a defendant to be convicted of a specified crime if the
20 defendant, while not himself committing the crime, assisted
21 another person or persons in committing the crime.

22 Under the federal aiding and abetting statute, whoever
23 "aids, abets, counsels, commands, induces or procures" the
24 commission of an offense is punishable as a principal. In
25 other words, it's not necessary for the government to show that

D3itdor2

1 the particular defendant you are considering physically
2 committed the crime in order for you to find that defendant
3 guilty.

4 If you do not find beyond a reasonable doubt that the
5 particular defendant you are considering physically committed a
6 crime, you may, under certain circumstances, still find that
7 defendant guilty of the crime as an aider and abettor. A
8 person who aids and abets another person to commit an offense
9 is just as guilty of that offense as if he personally committed
10 it. You may find the particular defendant you are considering
11 guilty of the substantive crime if you find beyond a reasonable
12 doubt that the government has proven that another person
13 actually committed the crime, and that the defendant you are
14 considering aided and abetted that person in the commission of
15 the offense.

16 As you can see, the first requirement is that another
17 person has committed the crime charged. Obviously, no one can
18 be convicted of aiding and abetting the criminal acts of
19 another if no crime was committed by the other person. But if
20 you do find that a crime was committed, then you must consider
21 whether the defendant you are considering aided and abetted the
22 commission of the crime.

23 To aid and abet another to commit a crime, it is
24 necessary that the defendant you are considering willfully and
25 knowingly associated himself in some way with the crime, and

D3itdor2

1 that that particular defendant willfully and knowingly sought
2 by some act to help make the crime succeed.

3 Participation in a crime is willful if action is taken
4 voluntarily and intentionally, or in the case of a failure to
5 act, with the specific intent to fail to do something the law
6 requires to be done, that is to say, with a bad purpose either
7 to disobey or to disregard the law.

8 The mere presence of a defendant where a crime is
9 being committed, even coupled with knowledge by the defendant
10 that a crime is being committed, or the mere acquiescence of a
11 defendant in the criminal acts of others, even with guilty
12 knowledge, is not sufficient to establish aiding and abetting.
13 An aider and abettor must have some interest in the criminal
14 venture.

15 To determine whether the defendant you are considering
16 aided and abetted the commission of the crime with which the
17 defendant is charged, ask yourself these questions:

18 First, did the defendant participate in the crime
19 charged as something he wished to bring about?

20 Second, did the defendant associate himself with the
21 criminal venture knowingly and willfully?

22 Third, did the defendant seek by his actions to make
23 the criminal venture succeed?

24 If so, then the defendant is an aider and abettor, and
25 therefore guilty of the offense. If not, then the defendant is

D3itdor2

1 not an aider and abettor. That's aiding and abetting.

2 There is another method by which you may evaluate the
3 possible guilt of the defendants to Count Four, the firearm
4 charge in connection with the October 29th, 2011 robbery, and
5 Counts Six and Seven, which is the firearm and murder charges
6 in connection with the December 12, 2011 robbery, this is even
7 if you do not find the government has satisfied its burden of
8 proof with respect to each element of the substantive crime
9 you're considering against a particular defendant.

10 So if, in light of my instructions, you find beyond a
11 reasonable doubt that the defendant you are considering was a
12 member of the robbery conspiracy charged in Count One, and that
13 the conspiracy included the substantive robbery crime on
14 October 29, 2011 -- that's Count Three -- then you may also,
15 but are not required to find that the defendant was guilty of
16 the corresponding firearms crime on that date, Count Four,
17 provided you find the elements I will lay out for you beyond a
18 reasonable doubt. Similarly, if you find that the defendant
19 you are considering was a member of the robbery conspiracy
20 charged in Count One, and that the conspiracy included the
21 substantive robbery crime on December 12, 2011 -- that's Count
22 Five -- then you may also, but again are not required to, find
23 that the defendant is guilty of the corresponding firearms
24 crime on that date, which is Count Six, and the murder on that
25 the date, which is Count Seven, again, provided that you find

D3itdor2

1 each of the following elements beyond a reasonable doubt.

2 Those elements are the following:

3 First, that the crime charged in the substantive count
4 was committed;

5 Second, that -- there's five elements for this form of
6 liability, which is referred to as Pinkerton liability.

7 First, that the crime charged in the substantive count
8 was committed;

9 Second, that the person or persons that you find
10 actually committed the crime were members of the conspiracy you
11 found existed in Count One;

12 Third, that the substantive crime was committed
13 pursuant to the common plan and understanding you found to
14 exist among the co-conspirators;

15 Fourth, that the defendant you are considering was a
16 member of the conspiracy at the time the substantive crime was
17 committed;

18 And fifth, that the defendant you are considering
19 could reasonably have foreseen that the substantive crime might
20 be committed by his co-conspirators.

21 If you find all five of these elements to exist beyond
22 a reasonable doubt, then you may find that particular defendant
23 guilty of the substantive crimes charged against him in Counts
24 Four, Six and Seven, even though he did not personally
25 participate in the acts constituting the crimes, or did not

D3itdor2

1 have actual knowledge of them.

2 The reason for this rule is a co-conspirator who
3 commits a substantive crime as part of a conspiracy is deemed
4 to be the agent of the other co-conspirators. Therefore, all
5 of the co-conspirators bear criminal responsibility for the
6 commission of the substantive crimes.

7 If, however, you are not satisfied as to the existence
8 of any of these five elements, you may not find the defendant
9 that you are considering guilty of the substantive crimes in
10 Counts Four, Six and Seven, unless the government proves beyond
11 a reasonable doubt that the defendant you are considering
12 personally committed or aided and abetted the commission of the
13 crimes charged.

14 All right. In addition to the elements of each of the
15 charges I just described, with respect to each crime charged in
16 the indictment, you must also consider the issue of venue,
17 namely whether any act in furtherance of the unlawful activity
18 occurred within the Southern District of New York.

19 Now the government need not prove that the crime
20 itself was committed in the Southern District of New York, or
21 that the defendant himself was present here. It's sufficient
22 if any act in furtherance of the crime occurred in this
23 district.

24 In this regard, I instruct you that the Southern
25 District of New York includes Manhattan, the Bronx, and

D3itdor2

1 Westchester. It also includes all the waters surrounding
2 Manhattan, Brooklyn, Staten Island, and Long Island, and the
3 air and bridges over those waters and the tunnels under those
4 waters.

5 I should note that on this issue, and on this issue
6 alone, the government need not prove venue beyond a reasonable
7 doubt but only by a preponderance of the evidence. A
8 preponderance of the evidence means that the evidence shows it
9 is more likely than not that something occurred. Thus,
10 government has satisfied its burden under the venue element if
11 you conclude that it is more likely than not that the crime
12 charged or any act in furtherance of the crime occurred in the
13 Southern District of New York.

14 If, on the other hand, you find that the government
15 has failed to prove this venue requirement by the preponderance
16 of the evidence, then you must acquit the defendants.

17 So those are the substantive counts. That's my
18 instructions on the substantive law.

19 I have some final instructions I want to share with
20 you. First, the indictment in this case refers to various
21 dates and amounts. As I noted previously, it does not matter
22 if the indictment provides that specific conduct is alleged to
23 have taken place on a certain date and in fact the evidence
24 indicates it was in fact on another date. The law only
25 requires a substantial similarity between the dates alleged in

D3itdor2

1 the indictment and the dates established by the evidence.

2 In this case you heard of evidence in the form of
3 stipulations, the evidence, the actual paper, and you have
4 heard them read. A stipulation is simply an agreement between
5 the parties. The stipulations that you heard contain facts
6 that were agreed to be true. As a result, you must accept as
7 true the facts contained in those stipulations. However, it's
8 for you to determine the weight, if any, to be given to those
9 facts.

10 Now you heard references to certain investigative
11 techniques that were used or not used by law enforcement
12 authorities in this case. There is no legal requirement that
13 the government prove its case through any particular means.
14 While you are to carefully consider the evidence presented by
15 the government, you need not speculate as to why certain
16 techniques were used and why others were not used. The
17 government is not on trial, and law enforcement techniques are
18 not your concern.

19 Your concern is to determine whether or not, based on
20 the evidence or lack of evidence, the guilt of each of the
21 defendants has been proven beyond a reasonable doubt.

22 You have heard testimony about evidence seized in
23 connection with certain seizures and at the time the defendants
24 were arrested. The evidence obtained from these searches was
25 properly admitted in this case and may properly be considered

D3itdor2

1 by you. Whether you approve or disapprove of how this evidence
2 was obtained should not enter into your deliberations, because
3 I now instruct you that the government's use of this evidence
4 is entirely lawful.

5 You must, therefore, regardless of your personal
6 opinions, give this evidence full consideration along with all
7 the other evidence in the case in determining whether the
8 government has proven the defendant's guilt beyond a reasonable
9 doubt.

10 Some of the persons who may have been involved in the
11 events leading to this trial are not on trial. This does not
12 matter. There is the requirement that all members of a
13 conspiracy be charged or prosecuted or tried together in the
14 same proceeding. You may not draw any inference, favorable or
15 unfavorable, towards the government or the defendants from the
16 fact that certain persons other than the defendants were not
17 named in the indictment, nor may you speculate as to the
18 reasons why other persons are not on trial. Those matters are
19 wholly outside of your concern and have no bearing on your
20 function as jurors. Whether a person should be named as a
21 co-conspirator or indicted as a defendant in this case or
22 another separate case is a matter within the sole discretion of
23 the United States attorney and the grand jury. Therefore, you
24 may not consider it in any way in reaching your verdict as to
25 the defendants.

D3itdor2

1 Now you have heard evidence during the trial that
2 witnesses have discussed the facts of the case and their
3 testimony with the lawyers before the witnesses appeared in
4 court.

5 Although you may consider that fact when you are
6 evaluating a witness's credibility, I should tell you there's
7 nothing unusual or improper about a witness meeting with
8 lawyers before testifying so that the witness can be aware of
9 the subjects he or she will be questioned about, focus on those
10 subjects, and have the opportunity to review relevant exhibits
11 before being questioned about them. Such consultation helps
12 conserve your time and the Court's time. In fact, it would be
13 unusual for a lawyer to call a witness without such
14 consultation.

15 Again, the weight you give to the fact or nature of a
16 witness's preparation for his or her testimony and what
17 inferences you draw from such preparation are matters
18 completely within your discretion.

19 There are persons whose names you heard during the
20 course of the trial but did not appear to testify. I instruct
21 you that each party had an equal opportunity or lack of
22 opportunity to call any of these witnesses. Therefore, you
23 should not draw any inference or reach any conclusion as to
24 what they would have testified to had they been called. Their
25 absence should not affect your judgment in any way. You should

D3itdor2

1 remember my instruction, however, that the law does not impose
2 on the defendant in a criminal case the burden or duty of
3 calling any witness or producing any evidence, and that it is
4 the government's burden to prove beyond a reasonable doubt each
5 count in the indictment as to each of the defendants.

6 The defendants did not testify in this case. Under
7 our Constitution, a defendant has no obligation to testify or
8 present any evidence, because it is the government's burden to
9 prove the defendant guilty beyond a reasonable doubt. That
10 burden remains with the government throughout the entire trial
11 and never shifts to the defendant. A defendant is never
12 required to prove that he is innocent.

13 You may not attach any significance to the fact that
14 the defendants did not testify. No adverse inference against
15 the defendants may be drawn by you because the defendants did
16 not take the witness stand. You may not consider this against
17 the defendants in any way in your deliberations in the jury
18 room.

19 Now you have heard testimony of what we call an expert
20 witness in this case. Ordinarily, witnesses are restricted to
21 testify concerning matters of fact. There are occasions,
22 however, where there is some technical or other specialized
23 area of knowledge that will assist the jury in deciding a
24 disputed fact. On those occasions, a witness who is specially
25 qualified by training, knowledge, experience, or education may

D3itdor2

1 be called to testify about some evidence or facts at issue in
2 the form of an opinion.

3 In weighing expert testimony, you may consider the
4 expert's qualifications, the opinion given, the witness's
5 reasons for testifying, as well as all the other considerations
6 that ordinarily apply when you are deciding whether to believe
7 a witness. You may give expert testimony whatever weight, if
8 any, you find it deserves in light of all the other evidence
9 before you. You should not, however, accept a witness's
10 testimony merely because he is an expert in a field. Nor
11 should you substitute your own reason, judgment, and common
12 sense. The determination of the facts in this case, again,
13 rests solely with you.

14 You've heard the testimony of law enforcement
15 witnesses. The fact that a witness may be employed as a law
16 enforcement official or employee does not mean that his or her
17 testimony is necessarily deserving of more or less
18 consideration, or greater or lesser weight, than that of an
19 ordinary witness.

20 And in this context, defense counsel are allowed to
21 try to attack the credibility of such a witness on the ground
22 that his or her testimony may be colored by personal or
23 professional interest in outcome of a case.

24 It is for you to decide, after reviewing all of the
25 evidence, whether to accept the testimony of the law

D3itdor2

1 enforcement witnesses, as it is with every other type of
2 witness, and give to that testimony the weight that you find it
3 deserves.

4 As with any witness, let me emphasize that the issue
5 of credibility need not be decided in an all-or-nothing
6 fashion. Even if you find that a witness testified falsely in
7 one part, you may still accept his or her testimony in other
8 parts, or may disregard all of it. That determination is
9 entirely for you, the jury.

10 You've heard witnesses testify that they were involved
11 in planning and carrying out certain crimes charged in the
12 indictment. Patrick Taylor testified that he entered into an
13 agreement to plead guilty and cooperate with the government
14 which included testifying at trial. The government has agreed
15 to bring his cooperation to the attention of the Court at his
16 sentencing.

17 You also heard that Janiel Brown entered into an
18 agreement with the government in which she agreed to testify at
19 trial, and the government agreed not prosecute her.

20 Experience will tell you that the government
21 frequently must rely on the testimony of witnesses who admit
22 participating in the alleged crimes at issue. The government
23 must take its witnesses as it finds them and frequently must
24 use such testimony in a criminal prosecution, because otherwise
25 it would be difficult or impossible to detect and prosecute

D3itdor2

1 wrongdoers.

2 You may properly consider the testimony of such an
3 accomplice. Indeed, it is the law in federal courts that the
4 testimony of a single accomplice witness may be enough in
5 itself for conviction if the jury believes that the testimony
6 establishes guilt beyond a reasonable doubt.

7 It is also the case that accomplice testimony is of
8 such a nature that it must be scrutinized with great care and
9 viewed with particular caution when you decide how much of that
10 testimony to believe. The fact that a witness is an accomplice
11 can be considered by you as bearing upon his or her
12 credibility. It does not follow, however, that simply because
13 a person has admitted to participating in one or more crimes
14 that he or she is incapable of giving a truthful version of
15 what happened.

16 Like the testimony of any other witness, accomplice
17 witness testimony should be given such weight as it deserves in
18 light of the facts and circumstances before you, taking into
19 account the witness's demeanor and candor, the strength and
20 accuracy of his recollection, his background, and the extent to
21 which the testimony is or is not corroborated by other evidence
22 in the case.

23 You may consider whether an accomplice witness, like
24 any other witness called in the case, has an interest in the
25 outcome of the case, and if so, whether it affected his or her

D3itdor2

1 testimony.

2 I caution you that it is no concern of yours why the
3 government made an agreement with the witness. Your sole
4 concern is whether a witness has given truthful testimony here
5 in this courtroom before you.

6 In evaluating the testimony of an accomplice witness,
7 you should ask yourself whether the accomplice would benefit
8 more by lying or by telling the truth. Was his or her
9 testimony made up in any way because he believed or hoped that
10 he or she would benefit or receive favorable treatment by
11 testifying falsely? Or did he or she believe that his
12 interests would be best served by testifying truthfully? If
13 you believe the witness was motivated by hopes of personal
14 gain, was the motivation one that would cause him or her to
15 lie, or was it one that would cause him or her to tell the
16 truth? Did this motivation color his or her testimony?

17 If you find that the testimony of the accomplice
18 witness was false, you should reject it. However, if after a
19 cautious and careful examination of the accomplice witness's
20 testimony and demeanor upon the witness stand, you are
21 satisfied that the witness told the truth, you should accept it
22 as credible and act upon it accordingly.

23 Again, as with any witness, let me emphasize the issue
24 of credibility need not be decided in an all-or-nothing
25 fashion. Even if you find that a witness testified falsely in

D3itdor2

1 one part, you may still accept his testimony in other parts, or
2 may disregard all of it. That determination is, again,
3 entirely for you, the jury.

4 You also heard that testimony that an accomplice
5 witness, Patrick Taylor, pled guilty to charges arising out of
6 the same facts that are at issue in this case. You are
7 instructed that you are to draw no conclusions or inferences of
8 any kind about the guilt of the defendants from the fact that a
9 prosecution witness pled guilty to similar charges. The
10 decision of that witness to plead guilty was a personal
11 decision that he made about his own guilt. It may not be used
12 by you in any way as evidence against or unfavorable to the
13 defendants on trial here.

14 OK. Just a couple more instructions.

15 When you go back in the jury room, the first thing you
16 should do is by your own vote select one of your own members to
17 sit as your foreperson. The foreperson will send out any
18 notes, and when the jury has reached a verdict, the foreperson
19 will notify the court security officer, who will be outside
20 your door, that the jury reached a verdict. And when you come
21 to open court, the foreperson will be asked to state what the
22 verdict is. Again, notes should be signed, and they should
23 include the date and time they were sent; signed by the
24 foreperson with the date and time they were sent.

25 You also should be as clear and precise as possible.

D3itdor2

1 Bear in mind any notes from the jury will be part of the record
2 in this case, so be as clear and specific as you can be in the
3 notes that you send. I will be formal in the notes I send, and
4 you should be formal in the notes that you send to me. They
5 will be part of the case as court exhibits.

6 Many of you have taken notes, handwritten notes,
7 throughout the proceedings, and that's fine. I want to again
8 emphasize, however, as you begin your deliberations, that notes
9 are simply an aid to memory. Notes that any of you may have
10 taken should not be given any greater weight or influence in
11 determination of the case than the recollections or impressions
12 of other jurors, either from notes or from memory. Any
13 difference between a juror's recollection and another juror's
14 notes should be settled by referring to the transcript, because
15 it's the transcript, the court record, rather than any juror's
16 notes upon which the jury must base its determination of the
17 facts and its verdict.

18 Now as I told you before, I'm going to give you a list
19 of the witnesses who testified at trial, and of the exhibits
20 that were introduced as evidence. You'll have those in the
21 jury room. I will also give you a copy of the indictment, a
22 copy of my instructions on the law, and a verdict form.

23 If you want to see any of the exhibits or hear or read
24 any of the testimony during your deliberations, that can be
25 arranged. Please appreciate, however, it's not always easy to

D3itdor2

1 locate the testimony that you might want, so be as specific as
2 you can. So if you want to hear a particular snippet of
3 testimony, tell us what part you want. You might want the
4 entire direct examination or the entire cross-examination, and
5 that's fine. But if you only want a subset of that, tell us
6 what you want about a particular subject or about a particular
7 event. We will then find the relevant portion and send it back
8 to you so you can refer to the transcript.

9 Again, any communication with the Court should be made
10 in writing, should be signed by your foreperson with the date
11 and time indicated on it, and then given to the court security
12 officer, who is that gentleman in the back. If it's not him,
13 it will be someone dressed just like him.

14 Now I will respond to any questions that you send to
15 me or any requests that you send to me in notes as promptly as
16 possible. I will send you a note myself, or I will bring you
17 out and talk to you in person on the record. But in any event,
18 do not tell me or anyone else how the jury stands on the issue
19 of determining guilt until after the verdict is received. So
20 don't send me a note saying we agreed on Counts Two, Six and
21 Seven and we're only working on Four. Don't do that. Don't
22 tell me anything about your deliberations.

23 When you reached a verdict, you send a note that says
24 we reached a verdict, period. Your foreperson will send that
25 note. I will then bring you out, I will then ask the

D3itdor2

1 foreperson to hand me the verdict form, I will look at it, I
2 will hand it back, and then I will have the foreperson read the
3 verdict into the record.

4 So don't tell the court security officer or me or
5 anyone else where you stand in your deliberations. When you
6 have a verdict, simply say: We reached a verdict.

7 All right. Your verdict must be based solely upon the
8 evidence developed at trial or the lack of evidence. You heard
9 me say that a few times. In reaching your decision as to
10 whether or not the government sustained its burden of proof, it
11 would be improper for you to consider any personal feelings,
12 positive or negative, that you may have about the defendant's
13 race, religion, national origin, sex or age. The defendants
14 are entitled to a trial free from prejudice, and our jury
15 system cannot work unless you reach your verdict after a fair
16 and impartial consideration of the evidence; both parties, not
17 just the defendants.

18 Now as I said, we prepared a verdict form for you to
19 use in rendering your decision. After you reached a verdict,
20 the foreperson should fill out the verdict form and sign it,
21 and then send out a note saying we reached a verdict, don't put
22 the verdict form into the envelope with the note, send a note
23 saying we reached a verdict, and bring the verdict form with
24 you when you come into court.

25 OK. Give that note to the court security officer, who

D3itdor2

1 will be outside your door. He'll be out there to make sure no
2 one is going to mess with you. And that's true in every case,
3 civil or criminal, I make sure I charge a court security
4 officer to make sure the jury can deliberate freely without any
5 interference.

6 I want to stress to you that each of you must be in
7 agreement with the verdict that's announced in court. Once
8 your verdict is announced by your foreperson in open court and
9 officially recorded, it can't ordinarily be revoked. So in
10 fact I will ask you if that is your verdict when we announce
11 the verdict in open court.

12 OK. I'm going to take a drink of water and talk to
13 the lawyers at the side bar and see if I missed anything or if
14 there's additional instructions I need to give you. A little
15 more patience and then it will be yours.

16 (At side bar)

17 THE COURT: Any corrections or clarifications?

18 MS. FONTIER: Your Honor, just one typo that you
19 corrected when you read it at page 50. It's page 50 in
20 paragraph A, the first element of government must prove beyond
21 a reasonable doubt on -- it refers to Count Seven, and your
22 Honor corrected that when you read it.

23 THE COURT: It says Count Three.

24 MS. FONTIER: It gets changed.

25 THE COURT: OK.

D3itdor2

1 MS. FONTIER: That was my only thing I noted. I would
2 just renew my objection to the Pinkerton charge.

3 THE COURT: Your objection is preserved.

4 Anything else?

5 MS. MASELLA: No, your Honor.

6 MR. ROTH: What do you want to do about --

7 THE COURT: I haven't found any clear authority, but
8 it does seem to me that residence has to be here, and seems to
9 me that he hasn't been in Westchester for two years, probably
10 we should err on the side of him not being here.

11 MR. ROTH: What's the government's position?

12 MS. MASELLA: We had someone else doing research at
13 the same time. We were not able to come up with an answer, but
14 the safer course seems to dismiss him and use the alternate.

15 THE COURT: OK.

16 MR. ROTH: I think that's true.

17 MS. FONTIER: Me too.

18 THE COURT: OK. I will do that.

19 I will give this last instruction and then I will
20 excuse them, bring Mr. Mills back and then --

21 MR. ROTH: Are you going to tell the other jurors why
22 he's getting the boot?

23 THE COURT: No. So I think I'll do that before I do
24 the last bit here.

25 MR. ROTH: They may think you're prejudiced against

D3itdor2

1 people who wear hoodies.

2 THE COURT: They may.

3 (In open court)

4 THE COURT: All right, ladies and gentlemen, I'm going
5 to excuse you for one second, ask you to go back to the jury
6 room while I follow up on something. Then I'm going bring you
7 back out and give you the last really page of instructions. So
8 don't discuss the case yet. Very, very close, I will be with
9 you shortly.

10 (Jury not present)

11 THE COURT: All right. This is obviously something
12 that we hadn't foreseen when we got up this morning. I don't
13 think there's dispute about the facts. Mr. Mills has been
14 residing outside of Westchester for two years or more, he has
15 been residing for the better part of the last year -- for more
16 than a year in Astoria, and nevertheless he references his
17 Westchester address as his official residence and that's where
18 he gets his mail.

19 I haven't found any case that exactly on point.
20 There's a 1991 case in the Second Circuit where there's a juror
21 whose stated residence had formerly been part of the Southern
22 District, but at the time of the trial was no longer in the
23 Southern District, and the Circuit held that he could still
24 serve since nobody made an objection, and noted had an
25 objection been made there could have been a substitution with

D3itdor2

1 an alternate jurors. But there's no claim otherwise the juror
2 wasn't otherwise qualified to serve, so it wasn't deemed to be
3 error.

4 This is a little different because we know about it
5 before deliberations and think each counsel have expressed
6 their view that we ought to strike the juror. I'm inclined to
7 agree. I think there is some issue as to whether there's an
8 intent component to being a resident of a district. It's not
9 exactly clear what Mr. Mills' intent is going forward.

10 So I'm looking at the statute. In all criminal
11 prosecutions the defendant shall enjoy the right to an
12 impartial jury of the state and district where the crime has
13 been committed. That's the language. As I said, 28, USC, 1865
14 requires that the juror be 18 years or older and have resided
15 for more than a year in the district of residence. So here we
16 don't have anything to suggest that he's been living here for
17 the last year, so I'm going to excuse him.

18 But anybody have any thoughts before I do that?

19 MS. MASELLA: No, your Honor.

20 MR. ROTH: Judge, well, I'll abide by the Court's
21 ruling. We don't object to him sitting.

22 THE COURT: You don't object to what?

23 MR. ROTH: Him sitting.

24 THE COURT: But you object to him being excused? I
25 thought you that you suggested I should excuse him.

D3itdor2

1 MR. ROTH: Hearing your Honor's position, I think that
2 it would be appropriate.

3 THE COURT: I want to make sure.

4 MR. ROTH: But if you found otherwise, we would not
5 have an objection to him sitting. We hadn't had the actual
6 benefit of the decision that you referred to.

7 THE COURT: I'm looking at United States v. Novod,
8 N-O-V-O-D, 923 F.2d 970, 1991 case. I don't think this comes
9 up that often, understandably. So I'm going to excuse him
10 since there's no objection, and in fact everyone agrees this is
11 the safest course. So let's bring out Mr. Mills.

12 I feel bad. Poor guy.

13 (Juror present)

14 THE COURT: How are you, Mr. Mills?

15 JUROR: Doing good.

16 THE COURT: Have a seat. OK. I talked to the lawyers
17 and looked at the law a little bit, and this is a situation
18 where you have been residing outside of Westchester for the
19 last two years or more, is that right?

20 JUROR: Yeah.

21 THE COURT: And do you have any intention to leave
22 Astoria and go back to Westchester any time soon?

23 JUROR: No.

24 THE COURT: All right. Well, because of that, I think
25 I'm going to have to excuse you, because the law requires that

D3itdor2

1 it be a jury of peers and a jury of people who are in the
2 district. And Astoria is in a different district in the
3 Eastern District of New York, Queens, Brooklyn, Long Island,
4 Staten Island, and part of the Eastern District of New York.

5 So it breaks my heart to do this because I know you
6 have been working very hard and been here the whole time paying
7 careful attention and being a very committed juror, but this is
8 I think something that is a legal issue that could have
9 implications going forward, so I think the better course is to
10 be safe. So I'm going to excuse you.

11 Let me ask you to do this, just don't discuss the case
12 until we have a verdict. I will get back to you when we have a
13 verdict, but let me take this opportunity to thank you for your
14 service. This is real service. You heard my spiel at the
15 beginning of this trial, but it wasn't just talk. I mean this
16 system only works because people are willing to commit
17 themselves and be dedicated to this process, and you did do
18 that. I think going forward you probably should clarify what
19 your residence is going to be so you don't get sort of caught
20 between districts again, but you should, whenever you get
21 called, certainly count this as your experience and explain
22 that you served for two solid weeks -- a little more than two
23 weeks on a jury and then were excused because of this issue.

24 But I know I speak for all the parties and for the
25 entire Court when I say I thank you for your service. You did

D3itdor2

1 a public service here at great inconvenience to yourself, and
2 that's something that you should be proud of. And I hope maybe
3 we'll see you again, but if not, at least you carry that pride
4 with you.

5 OK. So thanks very much. I'm going to send you back
6 to the jury room and bring them out. In fact, I will bring
7 them out and send you back in to get your stuff, and you're
8 free to go. And I will give instructions to the jury clerk so
9 you're free to go once I bring them back in. OK?

10 JUROR: OK. Should I wait here?

11 THE COURT: Yeah, wait right there.

12 Thank you. Let's bring in the jury.

13 (Jury present)

14 THE COURT: All right. At this time I'm afraid I will
15 have to excuse Mr. Mills. I already thanked him for his
16 service, but I'm going to excuse him and put Ms. Boykin in seat
17 number three. So your time has come, Ms. Boykin, you're in the
18 front row.

19 Mr. Mills, as I said before, thanks very much for your
20 service. I'm going to excuse you now and you can go back to
21 the jury room and get your stuff, and then you're free to
22 resume your life. Don't discuss with the case with anyone
23 until I get back to you with a verdict, and we'll be in touch
24 with respect to that.

25 Thank you. All rise for Mr. Mills.

D3itdor2

1 Ms. Boykin, come on down. So you are twelve.

2 The last bit of instruction that I have for you is
3 simply your function is now to weigh the evidence in this case
4 and determine the guilt of each of the defendants with respect
5 to the charges that are contained in the indictment. You must
6 base your verdict, as I said, solely on the evidence or the
7 lack of evidence and on my instructions as to the law. And
8 you're obliged by your oath as a juror to follow the law as I
9 instructed you, whether or not you agree with the particular
10 law in question.

11 In conclusion, I'm sure that if you listen to the
12 views of your fellow jurors and apply your own common sense,
13 you will reach a fair and just verdict.

14 It's 5:05. I thought we would go to 5:30. If you
15 want to go later, you're certainly free to, but I think we'll
16 go to 5:30 and then send a note indicating -- or before,
17 whether you want to go later today or continue tomorrow at
18 9:30.

19 Let me know in a note who you selected as a foreperson
20 and how late you want to go today, and if there are any
21 particular exhibits, let us know. In the meantime, we'll get
22 together the binders that I mentioned and send those in.

23 OK. So with that, do your duty. Take this seriously.
24 Now finally you can begin your deliberations, and so treat each
25 other with respect and care.

D3itdor2

1 Let me remind you that your deliberations involve all
2 twelve of you, and so if it turns out that one of you is in the
3 bathroom, or tomorrow morning eleven of you are here and one
4 person is not here yet, don't deliberate. You have to have all
5 twelve of you be present to deliberate. That's the nature of
6 jury deliberation. The twelve of you are this animal that is a
7 jury. The eleven of you without the 12th is just eleven
8 individuals, so you can't do anything until after you are
9 present and all of you are participating. With that, do your
10 duty.

11 Let me swear the court security officer.

12 This is the court security officer. It will be him or
13 someone else dressed like him. So in every case, civil or
14 criminal, the court security officer is assigned to make sure
15 the jury deliberates free from any interfering, so any notes
16 will go to and from him. And tomorrow we'll give you menus and
17 you can order lunch again and, that will be your home away from
18 home in the jury room.

19 (Court security officer sworn)

20 THE COURT: OK. With that, ladies and gentlemen, you
21 can begin your deliberations. Thank you very much.

22 (Jury retired to deliberated, time noted 5:07 p.m.)

23 (Jury not present)

24 THE COURT: We'll make one change, I guess, to one
25 page of the instructions, and then we'll send those to the

D3itdor2

1 jury.

2 Anything else we should discuss while we're here?
3 Mr. Mills didn't look happy.

4 MS. FONTIER: Totally out of my curiosity, is it
5 accurate -- for the venue, is it accurate that all of the water
6 around Brooklyn is part of the Southern District? Because if
7 you got off the beach in Coney Island, are you in the Southern
8 District?

9 THE COURT: I think there's Second Circuit case law to
10 that effect, yes.

11 MS. FONTIER: Then I have no objection to it
12 whatsoever.

13 THE COURT: It's not really relevant in this case.

14 MS. FONTIER: Not even a little bit.

15 THE COURT: OK.

16 MS. LESTER: Your Honor, I'm sorry, actually I did
17 notice one additional -- I think it's a typographical error on
18 page 33 of the charge with respect to the first element of
19 robbery. In the last sentence the charge references Count
20 Four, but I believe --

21 THE COURT: 33.

22 MS. LESTER: In the top paragraph, the charge
23 references Count Four, but I believe it should be Count Five,
24 Counts Three and Five are the substantive robbery counts.

25 THE COURT: I'm not sure, what paragraph again?

D3itdor2

1 MS. LESTER: In paragraph A at the top of page 33,
2 robbery first element.

3 THE COURT: Property of another, yes.

4 MS. LESTER: The last sentence it references Count
5 Three and then Count Four but it should be Count Five. The
6 other substantive robbery charge is Count Five, not Count Four.

7 THE COURT: Yeah, OK, that's right.

8 MS. LESTER: I think your Honor said Count Five.

9 THE COURT: I think I may have. I'm using a larger
10 print version, so I will make that change, page 33. And the
11 other change was to what page?

12 MS. FONTIER: 50, your Honor.

13 THE COURT: I will make those changes. Put them in
14 binders and get them to the jury.

15 So stick around, we may get a request. My hunch is we
16 won't get too far, but don't go anyplace.

17 MS. FONTIER: I don't know what your Honor's normal
18 practice is with the verdict form, did we do anything with that
19 on the record? I didn't have any objections to that.

20 THE COURT: I think I sent it to you. Are there any
21 objections to what was in it?

22 MS. FONTIER: No, your Honor.

23 MS. LESTER: Not from the government, your Honor.

24 THE COURT: So the verdict form will go back and we'll
25 see what they have to say.

D3itdor2

1 While we're doing that, let me say I thought the
2 summations were all very strong and people really knew what
3 they were talking about. Good use of the evidence. The whole
4 trial I thought has been well tried, good lawyers, who are
5 conscientious. So thank you for that, it makes my job easier.

6 With respect to Mr. Dore and Mr. Barrett, the waiting
7 is hard, so that's not lost on me either, but I hope that at
8 least you feel you got a fair trial. That was certainly my
9 hope was to make sure I called them the way I saw them, like an
10 umpire.

11 So what happens now with the jury is it's up to them.
12 It's a stressful thing to be waiting around, so I'm
13 sympathetic. It could be a couple of days, who knows what
14 happens, but thank you for your demeanor. Mr. Dore, that one
15 outburst kind of annoyed me, but otherwise you guys were good.

16 With that, we'll just wait.

17 MS. FONTIER: Thank you very much.

18 THE COURT: Thanks.

19 (Recess taken)

20 (Continued on next page)

D3iWdor3

1 THE COURT: I have a jury note. I'll mark it Court
2 Exhibit 1. It says, "We, the jury, select Mr. Plavsic to be
3 our foreman. We agree to leave today at 5:30 and resume
4 tomorrow at 9:30."

5 I just want to send them a quick note back just saying
6 that's fine, I will bring you back into the courtroom to excuse
7 you with further instructions at 5:30, just so they don't leave
8 early.

9 Counsel, I'm going to read this aloud now. This is
10 what I'm going to send in to the jury, Court Exhibit 2, at
11 5:15: "I received your note concerning your selection of a
12 foreperson and your request to stop deliberating at 5:30. That
13 is fine. I will bring you back into the courtroom at 5:30 to
14 give you some additional instructions."

15 I just don't want them to try to slip out before I
16 dismiss them. Is everybody okay with that?

17 MS. FONTIER: Yes, your Honor.

18 (Recess pending verdict)

19 THE COURT: Can we bring out the defendants?

20 (In open court; jury present)

21 THE COURT: Okay. Have a seat.

22 Mr. Plavsic, I got your note indicating that you have
23 been selected to be the foreperson and indicating that the jury
24 wished to leave tonight at 5:30 and resume tomorrow at 9:30,
25 which is fine. So I wanted to give you a couple of parting

D3iWdor3

1 instructions.

2 Don't obviously discuss the case with anyone. While
3 you're deliberating, the only discussions should be taking
4 place in the jury room. Let's be ready to go tomorrow at 9:30.
5 What I'll ask you to do is just assemble in the jury room, but
6 don't resume your deliberations until you send me a note, from
7 Mr. Plavsic, saying we're all here and ready to resume our
8 deliberations and then I'll send you a note saying, You may now
9 begin. I think if we do it with that kind of formality, it
10 will avoid any temptation to start early or to do things before
11 everybody's there. Wait until you get that green light from me
12 and then resume your deliberations.

13 We're just making a couple of photocopies. We don't
14 have your binders yet because we had a typo, but you'll have
15 the binders tomorrow morning, for sure. Then to the extent you
16 need anything tomorrow, you'll just send us a note and we'll
17 send it in to you. Okay?

18 With that, let me thank you. It's been a long day, I
19 know, but tomorrow we'll start fresh at 9:30. Okay? Have a
20 good night.

21 (Jury excused)

22 THE COURT: Okay. Have a seat.

23 I think I neglected to read the jury note into the
24 record. It was March 18, today's date, at 5:10, and it simply
25 said, "We, the jury, select Mr. Plavsic to be our foreman. We

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1 agree to leave at 5:30 p.m. today and resume tomorrow at 9:30
2 a.m.," signed by Mr. Plavsic.

3 I've marked this as Court Exhibit 1, and in response
4 to this, I've sent in a note I've already read into the record
5 that just says that's fine, I will bring you back in for
6 further instructions before I excuse you, which is what I just
7 did.

8 With that, anything we need to cover tonight? If
9 everybody could be here tomorrow by 9:15, or so, just make sure
10 you have exhibits ready in case the jury has requests for
11 specific exhibits, and then we'll see where we are.

12 Great. Have a good evening.

13 (Adjourned to March 19, 2013, at 9:15 a.m.)
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